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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. [redacted] iginal.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

ABSTRACT OF TESTIMONY.

ARTHUR J. W. HILLY,
Corporation Counsel of the City of New York,
Solicitor for Defendant,
Municipal Building,
City of New York.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff,
State House, Trenton, N. J.

(22087)

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Stipulation.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 17, Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

The parties hereby stipulate as follows:

1. The printed record before this court on the exceptions filed by the parties to the report of the Special Master is to consist of the printed abstract of testimony taken by the parties on the hearings before the Special Master to and including the hearing of April 8, 1930, together with a supplemental abstract containing subsequent proceedings before the Special Master, and with the following additions which were omitted from the transcript at the places specified.

On page 541 of the printed abstract (stenographer's minutes, p. 1619) the following should be considered as inserted:

> "Mr. Minard. In order to clear up the situation—I don't want to create the impression that we are complaining because of the short dumping. That is not our purpose, but we agree——
>
> Mr. Crowe. I think this is entirely out of order at this time. There is no question before the court on which argument on this question may be addressed. Part of my case is putting in the testimony of Captain Anderson with respect to permits. Coun-

Stipulation.

sel certainly will have ample time to argue his contention.

Mr. Minard. I don't care to press it."

On page 626 of the printed abstract (stenographer's minutes, page 1904) the following should be considered as inserted:

"Mr. Crowe. I am prepared to show, first, that the dumping has taken place and, as a certificate of that fact, I have offered to furnish those permits of the Federal authorities.

Mr. Minard. We admit that much; but we want to know how much garbage was dumped."

2. The parties reserve the right to refer to the original testimony.

3. The exhibits on file may be referred to in the briefs and argument without printing same as part of the record herein, as freely as though they were printed and reproduced in full, subject to any objections that may have been made to the introduction of any exhibits by any of the parties, and either party may have the right to print as part of his brief or as an appendix thereto any part of all or any exhibit or exhibits.

Dated: March 28, 1931.

STATE OF NEW JERSEY:

WILLIAM A. STEVENS,
Attorney General,

DUANE E. MINARD,
Assistant Attorney General,
Solicitors for Plaintiff.

THE CITY OF NEW YORK:

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

Appointment of Special Master.

[1] IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 18, Original.

THE STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

Asbury Park, New Jersey,

Wednesday, December 11, 1929.

The above-entitled cause came on for hearing before Hon. Edward K. Campbell, Special Master in said cause, appointed by the Court by its order of October 14, 1929, at the Berkeley-Carteret Hotel, at 10 o'clock A. M. The oath of the Special Master was duly filed. Appearances: For the complainant, Hon. William A. Stevens, Attorney-General of the State of New Jersey; Hon. Duane E. Minard, Assistant Attorney-General.

For the defendant, Hon. Arthur J. W. Hilly, Corporation Counsel of the City [2] of New York, by Hon. Thomas W. A. Crowe, Assistant Corporation Counsel.

The Special Master. In the case of the State of New Jersey versus the City of New York, I file a copy of the order of my appointment as Special Master. (The order is in words and figures as follows):

"SUPREME COURT OF THE UNITED STATES. No. 18 Original, October Term, 1929. The State of New Jersey, *Complainant, vs.* The City of New York. "ON CONSIDERATION of the motion for the appointment of a special master in this

cause, IT IS NOW HERE ORDERED by this Court that the said motion be, and the same is hereby, granted. AND IT IS FURTHER ORDERED that the Honorable Edward K. Campbell be, and he is hereby, appointed special master in this cause, with power to summons witnesses, issue subpoenas, and to take such testimony as may be introduced and such as he may desire to call. The master is directed to make findings of fact and conclusions of law, and to submit the same to this Court with all convenient speed, together with his recom [3] mendations for a decree. The findings, conclusions, and recommendations of the master shall be subject to consideration, revision, or approval by the Court. October 14, 1929."

I will swear the stenographer. (The stenographer was duly sworn by the Special Master.)

Gentlemen, before proceeding I want to read an extract from the opinion by Chief Justice White in the case of Virginia *vs.* West Virginia, which was an original suit, as this is, in the Supreme Court of the United States. He said:

> "As we have pointed out in acting in this case from first to last, the fact that the suit was not an ordinary one concerning a difference between individuals; but was a controversy between states involving grave questions of public law, to be determinated by this court under the constitutional grant of power conferred upon it by the Constitution, has been the guide by which every step and every conclusion hitherto appears to have been controlled. And we are of opinion that this guiding principle should not now be lost sight of, to the end that when the case comes up to be finally and irrevocably disposed of, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that anything but the largest justice, after the amplest opportunity to be heard, has in any degree entered into the disposition of the case."

[4] In the spirit of this utterance, gentlemen, I trust the present case may at all times proceed. Will counsel now enter their appearances:

Mr. Stevens. Counsel for the complainant: William A. Stevens, Attorney-General; and Duane E. Minard, Assistant Attorney-General, State of New Jersey.

Mr. Crowe. Arthur J. W. Hilly, Corporation Counsel of the City of New York, for the City of New York, by Thomas W. A. Crowe, Assistant Corporation Counsel.

The Special Master. Now, Mr. Attorney-General, you may proceed.

OPENING STATEMENT ON BEHALF OF PLAINTIFF, THE STATE OF NEW JERSEY.

Mr. Stevens. May it please your Honor, this is an original action brought by the State of New Jersey as complainant against the City of New York, charging the City of New York with maintaining a nuisance, a public nuisance, in that in the handling of its garbage the garbage is carried to sea off the coast of New Jersey, and in time finds its way to our shores and pollutes our beaches, causing irrevocable injury to our people, and against which we have for many years been complaining in an endeavor to stop those conditions which have confronted us, and which we hope to show to this Court have been of such a character as to do great injury to the State of New Jersey and its people along its shores. [5] We have brought this suit, as I said before, in this Honorable Court, and the City of New York has entered a general denial. We will produce witnesses here before your Honor to prove the facts set forth in our bill of complaint, and if we succeed, we are hoping for some injunction that will prevent a continuance of a condition from which we have long suffered.

The Special Master. Mr. Crowe.

OPENING STATEMENT ON BEHALF OF DEFENDANT, THE CITY OF NEW YORK.

Mr. Crowe. May it please the Court, at this time the defendant will make a very brief opening. The Attorney-General in his opening address has indicated that our defense is one of general denial. The City of New York is not indifferent to the welfare of the citizens of New Jersey or of any other community within the commuting distance of our own city. I dare say that during the time that the various municipalities and cities along the Jersey coast reap their great harvest—that is, during the summer period—perhaps the majority of the population of these summer resorts comes from our own city. We are vitally concerned, therefore, in everything that affects the health and the welfare of any community within reasonable commuting distance from the City of New York. The garbage has been dumped at sea under permit granted by the Federal Government. We have lived up to the [6] terms of those permits. We believe that if, as claimed, this garbage does pollute your waters and your beaches, it does not come from the City of New York. We believe that the vast number of vessels that patrol the coast in the coastwise and ocean traffic will prove to be the real offenders. During the past four or five years, perhaps longer, the City of New York has steadily pursued a policy of building incinerators for the destruction of its city garbage. We do not favor, because of the tremendous item of expense, the carting of garbage to sea daily. At the present time all of the garbage from the two largest boroughs of the City of New York, the Boroughs of Brooklyn and Queens, is now entirely destroyed by means of existing incinerators, the capacity of which at the present time is more than the anticipated increase in population of the city, and therefore in garbage. It is only a matter of a few years when the entire garbage output of the great City of New York will be entirely de-

stroyed by means of incinerators in our own city. We have entered a general denial here because everything that it has been within the power of our city to do, under the supervision and control of the Federal Government, we have done. We stand prepared to do even more.

The Special Master. Call your first witness.

WITNESSES FOR PLAINTIFF.

CYRIL A. SMACK. [7] On *direct examination.* I live at Seabright, New Jersey. I have lived there twelve years. At the present time I am in the contracting business at Seabright. When I was a boy 17 years old I was a life guard at the old Pannaci Bathing Beach in Seabright. The succeeding year I was a life guard at the Seabright Beach Club. Then I was away from Seabright for a time and later came back as superintendent of the Seabright Beach Club, where I held the position as superintendent for nine years. In July of last year I resigned that position. [8] (The witness marked on the map.) The Seabright Beach Club is the largest bathing institution in Seabright. At the time of my resignation I think the membership was a little over 400 families. It is a private club—maintained similar to a country club—for beach bathing purposes. [9] A great many of the members come from New York City. In fact, I think the majority of them are residents of New York, who have summer homes at Seabright, Rumson and various surrounding places.

As a boy 17 years old at the Pannaci Bathing Pavilion I had my first experience in Seabright with garbage. Prior to that I had had it at the West End—by the way, I was a life guard when I was 16 years old at the West End. In the course of each summer season there came, of course, a number of storms from the east, and whenever the wind came from the east, garbage came too, and as

the years went on, the quantity constantly seemed to increase. (Discussion on word "seemed.")

[10] I can say definitely that it did increase, but I don't mean to say that in each particular storm it increased, but definitely it did increase in average, and it increased to the point where, while superintendent of the Seabright Beach Club in the year 1924, we had masses of garbage that I had the whole force—I had four life guards employed, I had eight boys working there and two men out in the parking space removing it. All of this was in 1924. And there were times when I had to take all of that force, as I could take them from their other various duties, and put them to the cleaning of the beach, and still fail to keep ahead of the garbage as it kept coming constantly, and it was a source of constant complaint from the members, and a great many people would come down and look at the condition that obtained and would not bathe. Next door to us there was a public bathing pavilion, one that had a very nice trade, and when that condition obtained their bathing dropped off decidedly. A great many people who would come down, not knowing the conditions and prepared to go in bathing, would turn back [11] and not go in, the water being foul with the garbage itself, which always, when it is coming, comprises not only the ordinary things of garbage but a great many little flecks of grease. At the time I was superintendent of the beach club I lived within 30 feet of the beach. At the present time I live about 200 yards from the beach. I see the beach every day. The condition improved a little in 1926. I was secretary of the Seabright and Rumson Chamber of Commerce, and I was made a committee of one on this subject of garbage pollution, and if I may I will read from the record of the Chamber of Commerce on the subject something that will show a little slant on it. [12] (Discussion in re reading from record.)

Commissioner of Street Cleaning Taylor of New York City, came down to Seabright and to the Seabright Beach

For Plaintiff—Cyril A. Smack, direct.

Club in company with another man, and talked with my life guards, myself and other individuals there, and I can show just when that [13] time was. It was in August, 1925, and at that time he promised us that within a year, if we would lay off of him—those were his words—that within a year New York would complete all the plans for incinerating all of New York City's garbage. And I promised him on the strength of that promise of his that I would. I made a particular study of the situation during the summer of 1929. On April 30th, accompanied by a crew of two men, Gustave Holgarson and James Hall, I made the first trip out with the intent of finding what the garbage scows were doing, how they were dumping at sea, and on that first trip failed to find any garbage scows in the act of dumping. We made a succession of trips. Altogether we went out thirty-four times. [14] (Discussion on record of witness regarding trips to sea.)

In the course of that time, on 14 times we succeeded in seeing at close hand the garbage scows dumping. In each case I deposited 12 cards with stamps on them, self-addressed, with blank spaces on the reverse side for the name of the finder, place where found, time when found—and they were dated, by the way, under the date on which they were dropped, with the exception of one case, which I will show you later. (Offer in evidence a form of card used for test at sea.) [15] The cards were dropped right in the masses, just as they were dumped from the scows, after the dumping of the scows. [16] The cards, after filling out my name and address and putting stamps on the other side—were put in bottles. (The witness was shown a card that had his name and address on the blank side, with the stamp and all.) This is the way, then, that they came back. (Showing card filled in by finder and returned.) There were two lots of the cards, I believe, that I didn't get the dates in on this line. The rest of them I had the date on which the bottles were dropped on this line here. [17] (Discussion of admissibility of cards

without bottles. Objection overruled and exception.) [18] The cards were printed purposely for this work so that the form and everything is distinctly individual for this particular purpose. [19] (A card was offered to show method of test, dated June 20, 1929, and stating that it was found at Ocean Beach, off Dayport, Long Island, New York, with the name of the finder and the date of the finding.) [20] I put the card in a bottle and capped it and I dropped the bottle containing the card into the garbage, just after it had been dumped from the scows of New York City. I saw that card again I believe on the following day after the date of the post office stamp on it. [21] (The card under discussion was withdrawn and a substitute that was dropped July 2, 1929, and post marked September 18, 1929, was offered to show method of the test.) [23] (Discussion regarding admissibility of card. Objection to cards found in New York and Long Island. But cards admitted to show method of test used.) [24] Altogether we dropped 240 bottles containing cards. [25] Each one of those bottles was dropped right in the mass that had been dumped from the scows of New York City, immediately after the dumping. I received from finders, from various Long Island, New Jersey and New England beaches, 61 cards back through the mail.

May 22nd was the day of the largest and most foul smelling deposit, and this is a duplicate copy—I made the typewritten copy myself from my own report of what happened that day. Left Seabright at 10:30 A. M. on fishing cruiser OCEANIC. Crew, James Hall and Gustave Holgarson. 10:40 A. M., passed two Jettison scows and one tug loaded, going out to the northeast of Sandy Hook. Passed a tug and two empty garbage scows coming in northwest of Scotland Light at 12 o'clock noon. 12:25 P. M., passed one tug and three Jettison scows and another tug and two Jettison scows, all going southeast by east, loaded. Supervisor of harbor boat nearby. 12:29 P. M., passed one tug and two empty Jettison scows coming in.

For Plaintiff—Cyril A. Smack, direct.

At 12:28 three loaded scows got first signal from tug to unload. Other signals were followed by dumping of all three scows. [26] 1:45. Came abreast of tug Woodson with three New York City S. C. D. scows in tow, loaded with garbage, going southeast by east. We slowed down to pace them out to dumping point. A few minutes later we sighted one tow boat and one garbage scow loaded, going southeast by east. They gained away from us, as we were going at slow speed. Paced tug Woodson and her scows of the Department of Street Cleaning. 3:25, passed tug Joseph H. Moran with three New York City S. C. D. garbage scows in tow going northwest, a trail of garbage showing in the sea after them. Speeding up, we followed this trail with no difficulty, as we watched the garbage and grease for about two miles. Then we stopped and awaited Woodson. After Woodson and scows had passed us, we started after her once more and trailed her through great area of garbage-strewn sea at least seven miles in length and over two miles wide. The largest badly polluted section we have seen to date.

[27] In trailing Woodson we passed a Navy vessel towing one empty garbage scow, and believe these to be the scows we sighted going out earlier. They are now returning with scows empty. At 4:52 P. M., Woodson signalled three scows to dump, and started winding in a circle. Dumping continued until 5:19, at which time dumping was apparently considered done, although piles of garbage remained in spots along ridge lines of all three scows. In the meantime we deposited in floating mass of garbage 12 bottles with cards dated May 19th, and 12 with cards dated May 22nd. We netted with the crab net 18 bottles in the mass for future analysis before leaving the scene of dumping. The scows were the D. S. C. O., D. S. C. R. and D. S. C. D.

Sunday, June 30, 1929. Overtook Tug Woodson and three garbage scows, D. S. C. R., D., and E. at 11:35. Signal to start dumping given at 12:15, about 18 miles

southeast by east of Scotland Light. Ran into mass while dumping was still in progress. In the mass I saw an infant child's [28] body perfectly formed, as far as I could see, but very small. I judged about two pounds. Called James Hall, but he was too late to see it. Hall and I observing mass saw bed mattresses, pillows, laces, cords, timbers, signs made of wood, newspapers, bundles of various kinds of papers, many condrums, apple skins, oranges, orange skins, lemons, grape fruit, plum, cantalope, honey dew melon rinds, potatoes in various forms, skins, three cats, two dogs, pieces of lamb, various fowls and meat, celery stalks and trimmings, asparagus, lettuce, millions of grease particles, carrots, lace curtains, various articles of wearing apparel, turnip skins, catnip, milk and medicine bottles of all sizes and kinds, many electric light bulbs of all sizes and kinds, many rubber, cork and wooden balls, toys of many kinds, large and small wooden boxes and crates, paste board boxes, vanity cases, sanitary napkins, kotex boxes, parsley, carrots, beets, beet tops, spinach, cords, pieces of rope, small broken step ladder, shoes and slippers. Twice we had great difficulty in freeing the propeller of masses that had stopped us completely. We deposited 12 bottles at this date in the mass and returned home, observing as we passed the scows great patches still clinging to them and dribbling off, leaving as usual grease trails and garbage patches behind.

July 2, 1929. Garrett Johnson, photographer, accompanied [29] us today. We passed tug and three garbage scows of D. S. C. They were returning empty, with patches of garbage, however, visible one-third mile distant. This was 10:20 A. M. At that time we heard signals ahead and sighted another tug and three scows going out. Continued out. Saw them turning on signal blast, then head in. 11:55 A. M., passed Tug Woodson with three scows, D. S. C., E., N., T. Mr. Johnson took phototgraph of them. Grease trails and garbage patches were dribbling from masses still clinging to scows. Continuing out to

dumping point, as we turned in, as we came about, Mr. Johnson fell and damaged his camera. He made sufficient repairs on the way in, however, to take five additional photographs of scows, all within two miles of Scotland Light, one of these taken within one mile of the lightship.

This is Wednesday, July 17, 1929. Garrett Johnson, photographer, with us again today. James Hall, Gustave Holgarson and I aboard Oceanic. Passed Tug Joseph H. Moran with three scows in tow, D. S. C. S., W, and U, at 11 o'clock A. M., as they returned. Mr. Johnson took photographs of these. We continued on out to dumping point. [30] Mr. Johnson took several photographs from various angles of the mass. At 10:12 A. M., we passed the Tug Woodson and D. S. C. scows B, T, and M. Mr. Johnson observed with us the very definite grease and garbage trail as we followed it out to the dumping point, which these three scows left behind them. We went out thirty-four times and saw them actually dumping fourteen times. The list of the things which I mentioned as having seen on the garbage scow compares exactly with the general run of garbage scows that I saw dumped on these 14 different times. The condition of that material depends on weather conditions. It depends [31] on how long it has been held back before dumping. I believe that in the northeasters, or when the storm conditions are bad, they hold back until the conditions improve. When the weather was hot, after a northeaster, even as you approached the scows, you had to have a very strong stomach to endure it. The day on which I saw that little infant body, the mass was particularly foul smelling anyhow, and it was just so bad that by the time I got up on the ridge—I had been having a battle in the meantime, and I was just about as sick to my stomach as I ever have been, and I think a man would require a terribly strong stomach to endure what I did endure going out there through those masses.

There are two different forms of scows. [32] (The witness was shown page 3 from section 9 of the New York

For Plaintiff—Cyril A. Smack, direct.

Sunday Times of July 21, 1929—showing the method by pictures and descriptions of the handling of New York's garbage. On the bottom of that page there was a picture entitled "Dumping New York City's refuse at sea.") That illustrates one kind of barge that I am talking about. I think that is still another kind. I have never seen one working in this shape, with men throwing it off. I have seen men working on the ridge line within a mile of Scotland Light, discharging great quantities of it that were still clinging to the ridge line. There is a barge that is called a "side dumper," [33] that has gates or doors on the side. They swing out. When they swing out, the center of the barge is pointed and the contents just slide off into the sea. [34] (Pictures of scows were marked for identification as to type of scows.) [35] (Pictures were shown to witness.) I recognize these pictures. They were taken by Mr. Johnson, from the Oceanic on the trips that I described in my reports. I was present when the pictures were taken and I recognize them. [36] The scows of this type which open out on the side almost invariably when they dump they leave clinging to the ridge line great masses of garbage, and that mass that clings there at that ridge line gradually falls off. A quantity of it falls off and goes dribbling along in the sea as they progress towards shore from the dumping point. Identification No. 5 shows the men cleaning. In each case where I saw them, followed in after them, it was just exactly as they are shown there, but they didn't start in on that raking off until they got within three to four miles of Scotland Light, and that almost invariably brought them to the point where they were still cleaning garbage while they were passing Scotland Light, cleaning it from the ridge of the vessel. The point at that time would be approximately four miles from Sandy Hook.

[37] These pictures, four to eleven, inclusive, for identification, are the scows that I saw on one or more than one trip. These are the actual scows that I referred to and

followed and saw dumped. These pictures show the conditions of the scows after the dumping had been completed and as the men were cleaning them off by hand. That picture—I am not sure that you could say that it showed the scows with the sides opened or closed. There are some pictures that show them decidedly open where they are sliding out. [38] As these men clean these barges, the garbage came out into the sea and I followed the trail of it all the way in past Scotland Light. The garbage that they were cleaning off the scows was trailing in the sea behind them, a grease trail and occasional spots of garbage. [39] (Witness was shown a picture marked No. 5 which was marked "Plaintiff's Exhibit No. 12 for identification.") That is a tow of garbage scows going back. That I followed. That was taken by Mr. Johnson while I was there. There appears to be one section of water that is lighter than the rest, in the wake of those barges. Looking at it with the eye, as we did look at it, it is very clearly a grease mass what is called by the fisherman a "slick." [40] It is left behind by the barges. All this little area is a coating of grease. It is that particular type of grease which is always found where garbage is dropped in the water, little flecks from the size of one's little finger nail on down to the most minute particle of grease, definite grease flecks and grease scum. It comes from garbage, greasy substances that are in the garbage. [41] On the signal, when the barges reach the dumping point, on the signal from the tug, the scows begin their unloading, and the tug comes around in a circular motion and the dumping proceeds. Well, when they have completed the dumping—it amounts almost invariably to a continuity of the mass of the garbage that they have deposited, they have dropped into the sea. Well, that mass sometimes piles as high as a foot clear of the water, and gradually displacement takes place, the stuff crowds out and the heavier stuff finds its way through the mass floating in the water. (Witness was

shown No. 15.) You can see the heavier objects sinking. You can see some objects floating more than half-way out of the water. (Witness was shown 19, 18, 22, which with 15, were offered for identification.) I was present when they were all taken. They are part of the picture that Mr. [42] Johnson took at that time. (The pictures were marked 14, 15, 16, for identification.) Identification numbers 13, 14 and 15 illustrate what I have just said about the density of the mass supporting objects out of the water. The mass spreads, of course, invariably when you have got the second lot of scows dumping after the first have dumped. The proximity of the dumping point is such that in a short time the spreading of the mass brings it into still greater islands of garbage. [43] I have seen, for instance, the second three scows dumping in close proximity to the point where the apparent dumping of the others has been made—and when I say "apparent" I mean that I have seen, for instance, the first three scows coming in from the dumping point just after having left the point which the second three scows were approaching, which I have been following, and so I know they are definitely the ones that have emptied—and then the masses being dumped at this nearby point by the second three scows, as that spreads out in the course of a half hour's time or less they become one island. I have seen them cover an area at least seven miles long. [44] We actually measured by sailing our boat alongside the mass in a straight line. In a boat that was going at the rate of seven miles an hour we ran for 43 minutes along the mass, which is approximately five, or a little over five miles, along one side of it. I have seen them seven miles long. They will run as wide as two miles.

The largest number of scows that I saw dumped in any individual day was the day of May 22nd. [45] At 1:45 on that day we came abreast of the Woodson with three New York City D. S. C. scows in tow. At 3:25, passed Tug Joseph H. Moran with three New York City D. S. C.

garbage scows in tow—no, 12 was the most that we saw coming and going in one day. [46] The garbage was just so dense that in going through the masses repeatedly we had the experience out there of having to reverse the motor, after the motor was stopped by the stuff that would clog up the propeller. The vegetable and animal matter in there was very odoriferous. It was in a decaying process. It was offensive to the smell as well as the sight.

[47] Repeatedly we have stopped and observed just what the garbage mass did under different conditions of wind and tide, and we found that invariably it went ahead of the wind, if the wind was blowing with any intensity at all, no matter how the tide was going. [48] The garbage goes ahead of the wind, if it is blowing with any degree of intensity. Regardless of the direction of the tide. When the wind is blowing lightly and the tide gets going in a definite direction—say the wind is blowing from the west and the tide is coming in, under that condition the wind would have to blow harder from the west to carry it off-shore. I saw where those islands of garbage went. In some cases when the wind was from the west they went decidedly off-shore immediately from the time we saw them dump. [49] And in cases where the wind was from the east at the time of dumping they came ahead of that wind toward the shore. Most of the times that we went out, we caught a wind from the south, which carried it in the direction of the Long Island shore. (Witness was shown for identification picture No. 16, an unnumbered picture that was marked "A 12, 17, 21, 10, 20, 13, 23." These were offered for identification [50] were marked "Plaintiff's Exhibit 17". to "Plaintiff's Exhibit 24" for identification.) Identification numbers 17 to 24, I recognize these pictures as having been taken by Mr. Johnson on the trips that I have described. They show the areas of garbage in mass and also in the process of distribution as they drift to the shore. [51] (The witness was shown

identification number 13.) That is the picture of the time when they were still cleaning the barges as they passed Scotland Light and with the eye, observing from the Oceanic at that time you could see the men still working on that barge. You couldn't see to say positively that the barge was open, but the fact that the garbage was dribbling behind indicated that. Of course, it was too remote for us to see it at the time this picture was taken, but after a matter of a half-hour's sail we were over behind it, and there we could definitely follow the trail. They were cleaning the barges at that time. I have seen them cleaning the barges for three hours, with two men working on the ridge. [52] I have never seen them start cleaning immediately after the dumping. They seem to wait until they get near Scotland Light before they start that. They shove off at least as high as 25 cubic yards on their way into the shore from one scow. In a northeast wind, the garbage flows ahead of that wind toward the shore. I have seen it go to the shore. I have seen it work to the north, for instance, ahead of the wind from the south, and the wind cut across it from the northeast, and definitely the garbage would change its course and drift ahead of that northeast wind [53] toward the shore. As it approaches the shore there is garbage and refuse in the undertow. At the time that stuff works to the shore, by the time it gets inside the breakers, it is all thrown in a mass, everywhere in the water. It distributes on the shore all the things I have described. And I have had the experience oftentimes of having people remark the fact that they could not make soap work on them under the showers after coming out of that water, because of the grease that was fast on their bodies. It leaves a horrible mass of garbage right there on the beach very definitely. For instance, you can have guards cleaning up the beach after a storm has brought a mass of that stuff in, and after they have done all the raking they can on it, why, people walking in that will still be walking in grease which

will cause the sand to cling to the feet between the toes. [54] The seven mile area of garbage positively did not come from passing vessels. I saw them come from the New York Street Cleaning Department barges. I have over a period of years observed these barges going out to sea only at a distance. I have not followed them personally. From the time I was a boy 17 years old I have seen them going out when visibility was good. Of course, you can't see it from the beach excepting when the visibility is good. The effect upon the development and the enjoyment of the use of these beaches during the years as a result of this garbage from the scows, I think has been very harmful. There are times when bathing is absolutely impossible on account of garbage. There are times when people who have [55] any nicety in them at all would not think of going into that ocean. I have seen times when the waves were full of floating matter, bottles and everything that went with the garbage. My experience at the Seabright Beach Club—I had always two and sometimes three first aid kits, and I have had three first aid kits in use for people's feet who had cut themselves with glass in the water, where that stuff had broken in the surf. I have seen the islands of garbage float very definitely toward the [56] shore repeatedly, and I have seen them follow the definite trail to the point where they deposit some quantity at Sandy Hook. (Motion to strike out entire testimony of the witness. Overruled. Exception.) The garbage contains practically the same mass, excepting those things which are heavier, as the mass that is dumped at sea. Always in that stuff at sea, when you get to the outside of the mass, so you can look down underneath, you can see a percentage of stuff dropping down into the water. As soon as the density of the mass is released, those things that will sink do sink. But the lighter stuff comes [57] drifting right ahead of the wind, and that is just exactly the content of the stuff that is deposited on the beach. It consists of cats, dogs, various kinds of meat,

and all kinds of fruits and vegetables—the articles which I described in that one count. It isn't a very nice thing to say, but repeatedly in my experience as guard and superintendent of the Seabright Beach Club I have had to stop little children who had picked up condrums from the masses of that garbage, little children in the act of blowing those things up. The condition of this mass when it comes ashore is putrid. Some of the time that I was at the Beach Club we had it carted away—that is, quantities of it carted away. Then again we buried great quantities of it, having men, for instance, at times digging holes constantly for the throwing in of that garbage, the reception of it.

I am not very familiar with anything south of [58] Island Beach on the Jersey shore. That is approximately twenty-six or eight miles below here. I am not sure of that myself. [59] (Discussion on form of question.) I have seen garbage on practically all of that entire beach from Seabright right down to Island Beach. I have not spent much time out on the water. [60] I have done more swimming in the water than I have sailing on it. I have made complaint to the City of New York about this garbage. In the capacity of committeeman of the Seabright and Rumson Chamber of Commerce, and as secretary of the Chamber. In fact, I have the resolution here that I drafted for the Chamber, on motion of the Chamber. I communicated in New York with Mr. Taylor, who is in charge of the Street Cleaning Department of the City of New York. I got a response from Mayor Hylan. [61] It was by letter that I received, a reply from Mayor Hylan. I had a visit from Mr. Taylor. He wasn't there to see the condition at its worst, but he did see what after three days following a storm remained uncleared, after men had been working for that period on it. [62] The actual cost of removing garbage I could only say was that of the men who came and carted it away, but the fact that the garbage came in such mass accounted for the fact that we had

three life guards on the beach, whereas we otherwise would have had two; and it accounted for the fact that we had eight boys instead of six. So that the wages of the one life guard and the two boys throughout the entire season could be charged to the garbage. Prior to the visit of Mr. Taylor it was a different wind that brought the garbage to our shores. After that I know that they went out further. Prior to Mr. Taylor's visit the wind that brought the garbage in came from further around to the north. [63] Mr. Taylor at the beginning of our conversation insisted that it was not New York City's garbage and that there was no justification for our claiming that it was, but before he departed he really admitted that he believed it was New York City's garbage, and he asked us to lay off him—those were his own words. He said: "I am going to ask you, I am going to beg of you to lay off me. You are making my life a hell." Those were his words, and he said: "If you will, within one year we will have completed all of our plans for incineration and we will dispose of all of New York City's garbage in that way." Immediately following, it was a different point of wind that brought us the greater mass of the garbage. It was further around, in other words, to the south. The point of origin of that garbage had been changed. It can come under different conditions. Now when the wind blows from the south after the mass is dumped, and then [64] a northeast wind springs up, that may have been carried ten miles to the north directly ahead of the south wind, and if it is cut across at that time by a norther, it will drift southwest from that point, but if the drive at the time it is dumped is right from that point, from the northeast, it will take it approximately ten miles further to the south.

[65] I have collected exhibits and seen garbage on the shore that would identify the source of it. [66] I have seen theatre tickets dated a few days before the date on which they were found; personal letters, including love

letters, that were dated only a few days before the date they were found on our beaches addressed to New York City addresses. They had invariably been opened. I have seen milk bottle caps of New York City addresses, business cards of various kinds, forms and letterheads. I have seen boxes addressed to New York firms, with names printed on them, in every case New York firms. [67] My little girl picked up some a few hours ago. I saw her. The wind was northeast this morning and I asked my little girl to go out on the beach. [69] I have not looked for anything recently.

On *cross examination.* Quite a large percentage of the population of Seabright commutes back and forth from New York every day. The population of Seabright is very largely derived from New York. I was employed to make these trips to sea and take these photographs to which I have referred, the photographs offered for identification by the Attorney-General's office of the State of New Jersey. [70] I made thirty-four trips to sea. I cannot give the dates of the trips now. I could at a later date. (Discussion regarding production of dates.) I am at the present time engaged in the business of contracting, carpentry, general building contracts. [71] Outside of my experience along the coast, I have never been to sea—only swimming, and short trips from the shore. I have been swimming on the high seas. I have gone out about as far as anybody has on the high seas, I think. I swam out eight miles and returned, not in the last few years though. I did that when I was 17 years old. [72] I am 41 now. I made the first trip to sea, pursuant to my retainer by the Attorney-General of the State of New Jersey, on April 30, 1929. Captain Holgarson and his son, Oscar Holgarson, and myself constituted the party aboard on that occasion. We made the trip in the fishing schooner Oceanic, a 34-footer, with a gasoline driven engine. [73] (Discussion regarding dis-

tance between Seabright and the outlet from Raritan Bay.) I have lived in the vicinity of Seabright for 12 years. I am not generally familiar with the condition of [74] the waters of Raritan Bay. I do not know whether or not the waters of Raritan Bay are very much polluted by sewage from New Jersey. I actually trailed the garbage for a length of time on my trips to sea. [75] On the first trip we made no connection with a garbage scow at all. We went out at night and we didn't find any. That date was April 30th. The next day that I went to sea, pursuant to my retainer by the Attorney-General, was May 2nd, if I am not mistaken. This was the date on which we caught the first dumping. But it may have been May 1st. I am not sure of that because I have not the full record. On the day on which we saw them for the first time in the act of dumping, we rowed up to the mass and deposited the 12 bottles, then observed the content of it, and that was practically all. [76] No pictures were taken on that date. These pictures that have been offered for identification here were taken on the days of July 2nd and July 17th, I believe. There were only two of the dates of the thirty-four on which I went to sea, when pictures were taken. (Witness given pictures previously offered for identification.) [77] (Witness used letter of photographer dated July 25th.) Number 5 is a picture of scows returning to shore, taken July 2nd at 11:55 A. M. [78] Identification numbers 2, 3, and 4 being plaintiff's exhibits for identification 3, 6, and 10, were scows returning to the shore. These pictures were taken at approximately 11:55 A. M., on the morning of July 2, 1929. Five is exhibit No. 12, identification No. 12, scows returning. Note slick in water. That is the photographer's note. That was taken just in the sequence of time in which we could ride that distance from the scows and the tugs, about 12 o'clock on July 2nd. 1, 6, 7, 8, and 9—being exhibits for identification 9, 4, 7, 8, and 5 are scows photographed approximately one mile from Scotland Lightship [78A] taken on the day of July

2nd, about 2:30 in the afternoon. Print No. 10, being complainant's exhibit No. 13 for identification, was taken on the 2nd of July following after, a matter of about five or ten minutes, possibly about 2:45. Prints Nos. 11 and 12 being complainant's exhibits Nos. 11 and 20 were taken on July 17, 1929. Prints Nos. 14, 15, 16, 18, 19, [79] 20 and 22, being complainant's exhibits for identification Nos. 17, 18, 13, 14, 15, 22 and 16, were taken on July 17th. Every scow shown is a side dumper. I have never been aboard one of those scows. I have been close enough to one of these scows to reach out and touch it. I do not know the length of the ridge pole on the scow positively. I think that they vary some, some of the older types and the newer—approximately 100 feet. I do not know the width of this ridge pole on the side dumper. I have never been where I could examine it. [80] The width would not have anything to do with the approximation of the quantity of garbage, because you can see the garbage from the end, but you can't look down and see that ridge and see how wide it is. That ridge line is concealed from that end. When we go out around there we can't see from the end. You can only look at that side. You can't tell how wide that is. I wouldn't say a thing in regard to the width. [81] While I was out there watching these scows in operation, going to and fro, I saw federal inspectors and harbor boats but not always. I couldn't say positively whether or not every one of those scows, as shown in that picture, have the side open for dumping or closed. [82] (Witness shown identification No. 8 and asked what on picture would indicate that sides were open or closed.) The fact of that discrepancy there in that line certainly tells that that one at least is open. I can't say that it is open or closed. (Witness shown complainant's Exhibit No. 7 for identification.) [83] I can't say that the photograph shows that it is open or closed. (Witness shown complainant's Exhibit No. 4 for identification.) From an examination of the picture I could not say whether the scow, a

side dumper, is open or closed. (Witness shown several more pictures.) I can't say that the photograph indicates that it is either open or closed. (Witness shown complainant's Exhibit No. 5 for identification and asked what part he understood to be the "ridge pole.") [84] I haven't referred to it once as the "ridge pole." I have referred to it as the "ridge." Because a pole constitutes something that I don't know whether it exists in that case or not. I mean the uppermost line, in other words, that which comes nearest to the sky line there, excepting where the garbage interferes, and the men. It is the dividing line between the two sides. It is that part of the scow shown in complainant's Exhibit No. 5 on which a man appears with a rake in his hand pushing off the garbage or deposit on that scow. There is nothing to indicate where this scow was at the time this picture was taken, excepting that it was on the water.

[85] Through the major part of the conversation with Street Cleaning Commissioner Taylor of New York, there were two of my life guards present, Jerome Welch of Seabright and Oscar Nelson, if I am not mistaken, was the name of the other guard, but I am not sure of that. Seabright is Oscar Nelson's address at present and I don't know that of the other man. Most of the conversation took place on the beach in front of the Seabright Beach Club in Seabright. I am not sure whether I can fix the date any closer than August, 1925. [86] There was another man with Mr. Taylor. I do not know who the other man was. I was introduced to him, but I have forgotten his name. From the time material is dumped off the scow, it depends on just exactly the position of the stuff which does submerge, about its position in relation to other stuff that will float and will float sufficiently high to float things that otherwise would submerge, until it has stretched to the point where the stuff can drop that is heavier. Now, I think if you want me to explain what I mean by the answer, I can show you in one of the pictures here. The

material comes off the scows in masses. [87] It becomes immersed. It spreads, and you can see from the sides of it some of the heavier stuff constantly settling down for a time, but as the stuff straightens out, that dropping down of stuff ceases. I have tested and observed it pretty well. You can see down pretty well in that water down there. That is good clear water when you get outside, but when you get up to the bar there is nothing clear there. You can see the garbage submerging from the outside of it, but not all of the garbage. You can't see the lighter stuff submerge; all you can see is things like heavy stuff that is heavier than the water it displaces. [88] The garbage floats in large masses above the surface of the water for an appreciable length of time after the dumping. [89] I have known it to float for hours, and I would say at least five hours, in great masses. [90] That is my impression. I have trailed the garbage that I saw dumped on one of these dates in a definite line right to the beach. The point at which the dumping was done was approximately 20 miles southeast by east of Scotland Light, and the beach was four miles, approximately, from the light. We moved right along with a definite line of garbage to that point, just offshore of Sandy Hook.

[91] I do not know when this particular dumping took place. I have the means of finding out from my own records in the matter, but I haven't it with me. (Discussion regarding production of record.) [92] The period of time during which I stayed with and traced the course and direction of the garbage was approximately 4½ hours. I can't recall the date. The wind condition was that the wind was slightly south of east. I think it was blowing perhaps at the time that we came in thirty miles an hour. We were in a gasoline boat of 34 feet on this occasion. [93] The hardest the wind was blowing at any time that I was out there was perhaps fifty miles per hour. We were always in the same boat. When I traced the garbage, we were moving under our own motive power

For Plaintiff—Cyril A. Smack, cross.

at less than half speed. I have given time and study to the question of tides and currents. As they concern the Jersey shore, anything that floats on the surface of the water is not affected to any appreciable degree by the tides when the wind is blowing at all hard. [94] The data or basis upon which I rest this conclusion is from observing it day after day, the ocean and things floating on the surface of it, under all conditions of tide and wind, and many days and many years. The surface current at or about the vicinity of the dumping grounds is inspired by the winds. Whether science recognizes it or not, if it arrives at the right conclusion they would, because every fisherman who goes out there can tell you that. I think that when the wind is driving hard in the east, a falling tide simply means that the water underneath is going out. [95] The wind affects the surface currents. To what extent or depth the wind affects the surface currents has never been involved in my study. Any objects floating on the surface would drive before the wind. Objects that submerge are affected by the wind. [96] I know in regard to objects near the beach, they are positively affected by the wind. For instance, coal, things that will settle to the bottom but not settle hard perhaps in the sandy bottom, when the wind is from the west those things which settle to the bottom will work up on the beach. I think that it must work from perhaps an 18 foot or greater depth. Which only goes to prove that it is the law of nature that the waters are governed by in the matter of seeking their level, that when this water is blowing off here, that under water is carrying things this way (illustrating). I would say that wind would affect water to a depth of at least 18 feet. [97] I have never verified the statement I have made, with the reports of the U. S. Hydrographic Bureau. (Witness to be recalled at which time he is to produce records.)

For Plaintiff—Jesse A. Howland, direct.

[98] JESSE A. HOWLAND, witness for and on behalf of the plaintiff, on *direct examination.* My post office is Seabright; my residence Rumson. I have lived within a thousand feet of the beach for 59 years. My business is bulkhead and jetty building—contractor. I have been in that business about 38 or 39 years. My business takes me out in the water as far as seven or [99] eight hundred feet. I am familiar generally with the seacoast along here. I have been engaged in the bulkhead business along the north end of Jersey from Sandy Hook to Bayhead, and have done considerable work at Ocean City and Margate, which is below Atlantic City. Starting in from Sandy Hook I have worked for the United States Government, Seabright, Monmouth Beach, Long Branch, and down to Ashbury Park, all the way along, Allenhurst, Ocean Grove, Bradley Beach, Avon, Belmar, Bayhead, Beach Haven. In 1884 I was bathing master at the Octagon Hotel at Seabright. I was there two seasons, 1884 and 1885. [100] I had been on the beach all my life from the time I was able to walk, to get out of the house. In those days we lived so that you could toss a stone into the ocean.

I am very familiar with this question of garbage along the shore. I have been so from the time that I was able to walk and get out on the beach, about 55 years. I was bathing master at the Normandie Hotel. From the time I was able to work I have spent my life on the beach. The last 40 years my business has been on the beach. In the last two years I haven't been—well, I have had just as much work if not more work, but I haven't been so active, but I have been on the jobs every day. I have seen no end of tows, dump scows, going out [101] to sea loaded, and I have seen lots of them come back empty. That observation was made by different trips on ocean liners. I never saw the actual dumping operations. I was able to identify the scows because scows came ashore along with garbage. In my lifetime I have known of about

six. There was one or two landed below the Highlands, below what we call Highland Beach, three down towards the point of the Hook, and up against the Keansburg dock. One that came ashore in a very bad storm about six years ago I was requested by the owner of the scow to take men and go down first and make an observation to see if she could be saved; and then I was requested to take men down, and a boat, a small boat, to run lines to the Cahill Towing Company's large tugs, and they floated her. [102] None of these scows belonged to the New York City Street Cleaning Department. They were hauling garbage from New York City.

When I was bathing master at the Octagon Hotel and at the Normandie Hotel, it was one of my duties to keep the beach clean, and we had so much garbage at times that it was impossible for me to find spots on the beach to bury it after it was raked up. At least three hours, an average of three hours a day was spent by myself in raking garbage and burying it. It consisted of all kinds of vegetable matter, broken furniture, eggs, electric light bulbs. I have in my lifetime seen two dead babies come ashore on the beach—cats, dogs, all kinds of decayed fruit, rotten meat—most any and all kinds of refuse matter that would come from a large city. [103] I noticed there broken victuals, refuse from the table. It consisted of orange peelings, half an orange skin, half a grapefruit skin. Often out of curiosity I have picked up bundles of papers and cut them open—they were tied up—cut them open to see where they were from, and I found memorandums from business houses down around Chambers street, in the produce district, and theatre tickets, cancelled stubs from New York. I have picked up obscene matter, printed literature and cut the strings and opened it. And no end of memorandums, letters and things picked up, letters, envelopes, [104] addressed to New York. There were not any other address on them than New York. These things that I picked up and opened have

extended over a period, I would say, of perhaps 45 to 50 years of time. I have seen old broken crates and boxes with addresses on them in stencil—that is, marked out, stenciled out. Some were cut out, stenciled, marked over with a brush, and others where you just take a brush and mark off the name on them. They were addressed to New York. I won't say positive that I ever found bottles that still had labels on them. I have seen no end of bottles. I have seen in my lifetime, I guess, close to a million bottles on the beach. The bottles break up. I have had lots of people—if there happens to be a ridge of gravel in the undertow and [105] the bottles are thrown down into it, they break, and I have had lots of people, lots of bathers under my charge who had cut their feet very badly on the bottles. There are times that garbage comes in in unlimited quantities. I have seen it come in so that between high and low water you couldn't find clear sand enough to lay down on the beach. The beach was absolutely covered. I have seen quantities or masses of it floating in the sea. I have seen it with the beginning of a northeaster, with the current coming in out of the northeast I have seen [106] garbage almost as far as you could look. Standing on the beach, you could observe it a distance of probably three miles. I have gone by on ocean liners going across. I have seen the scows. I have not moved through the dumping ground. I know that the material, from the material that I have picked up on the beach and examined, that it originated in New York City. Whether it came out by steamer or by barge I don't know but I know positively that one of [107] these barges that came ashore up at Keansburg had half a pocket of garbage in her that wasn't dumped. This garbage come in on northeast, east, southeast winds. The dumping ground, as I understand the Government regulations, would be a little south of east from Seabright. That is the direction from which the garbage comes on the winds that bring it in. If it came from vessels it would have to come from the same direction. If any of

it came from vessels it would have to come from the same direction that the garbage comes from from New York. I am familiar with the tides and the currents of water in the ocean off the shore. There is nothing about the tides or currents that would suggest to me that only the garbage from the [108] vessels would come ashore, and that all of the garbage that the scows dump would go in the other direction. When we were building the jetties along the shore here we encountered this garbage every day, but not in quantities that would interfere with my work in building jetties. Within the last four or five years I have seen all the garbage that I have described before in my testimony, with the exception of infants. When I was working on the jetties, I got the effect of the undertow along with my work there. I found the undertow contained garbage. I have found at certain times that if the material lays for a considerable length of time on the south side of the jetty, it may become, as you would call it, water logged, so that it will submerge below the surface, but not sufficiently heavy to lay dead on the bottom, and I have seen the seas comb up and break and the water be full of it, and with [109] nothing, apparently, floating on the surface. I have seen this in all of the different places that I have worked excepting Beach Haven, Ocean City and Margate, because I had the work there, but I went there only occasionally, and it wasn't directly under my supervision. I have seen it at all the other places. On the shore there is a great deal of it in such condition that you don't want to come in contact with it. It is decayed. It is very offensive. It is in a putrid condition, and sometimes I have known where they have had to send and get the dead animal man to take stuff away. I have had it where I have raked the beach [110] up and cleaned up everything that a rake would take, and I have had it so that it would leave gobs of grease and fat so if you stepped in it, it would be all gooey between your toes. It was just a sort of a residue of decayed stuff.

For Plaintiff—Jesse A. Howland, cross.

I have had so much of it when I was bathing master, so much of it on the beach, that when I hadn't room on the beach to dig holes and bury it any more I have heaped it up and tried to burn it by pouring kerosene on it. I have not seen them collecting it in wagons and carts on the beach and hauling it away. I have seen these slicks in the sea that they refer to, the grease areas that come in with the garbage.

[111] On *cross examination.* I have been engaged in one capacity or another along the sea shore front here for about 39 or 40 years. I testified that I saw the scows passing to and fro to the dumping grounds from an ocean liner, in going back and forth to Europe. But with clear visibility, I will add to that, with clear visibility you can see from Seabright—you can see the tows going out and coming back empty. You can't see to the dumping grounds from Seabright under any conditions of variable visibility. [112] Scows have been washed up on the shore during terrible storms. Those scows were not Street Cleaning scows of the City of New York, but scows of private contractors, like the Bowker Company and O'Brien Brothers. I am testifying about the scows belonging to O'Brien Brothers, hired by the City of New York.

Q. And what connection did you have with O'Brien Brothers?

A. I have been having business dealings with O'Brien Brothers for about 15 years and know the scows were hired by the City of New York or by people in the City of New York, the Mayor and the Street Cleaning Department and the officials of New York City. [113] O'Brien Brothers had two come up on the beach and one went to pieces just off of Seabright. That was approximately six years ago when they had one go to pieces, and in the same storm one went ashore at Sandy Hook, and the Bowker Company had one come ashore at Sandy Hook at the same time. The O'Brien Brothers didn't have any

control over the Bowker scow. [114] Mr. Bowker told me it broke loose with a load of garbage for the City of New York. It is approximately six years ago. I would say that it was in the very early spring. I would say February or March, 1923. It might be 1922. I am not in a position to give the date. My best recollection is about six years. [115] That was not at the time of that terrible storm that destroyed the Octagon Hotel. That hotel swept out to sea the week of Christmas, the holiday week of 1913. The materials that I saw and about which I have testified were seen by me on the beach. I never saw any dumping operations.

STEWARD COOK on *direct examination.* [116] I live at Long Branch. I have lived there for a little over 83 years. I am familiar with the water front, the beach in the vicinity of Long Branch. I was a fisherman for about 70 years. My business brought me right in with the sea all the time. I went out to sea as a fisherman. I retired from the sea when I was 42 years old, and I retired from business three years ago. During the past ten years or so, I have not gone out to sea frequently. I have never seen the scows dump their garbage out to sea. [117] I have seen the garbage floating in the sea in areas. Whenever the wind was northeast or north or east, and the current was right, the garbage was always there. I have observed it from Seabright to Long Branch. I have seen a whole lot of it, piles of it. I have seen the garbage on the shore whenever the wind was right, sometimes in very large quantities; sometimes not quite so large. [118] This material consists of anything on the calendar; grapefruit, oranges, lemons, bananas, onions, potatoes, turnips, cabbage, lettuce, vegetable crates of all kinds, beds and bed springs—I know that, you know, because I had nets, and the old bed springs would get into the nets—tin cans of all kinds, glass bottles of all kinds, chickens, cats, dogs, horses, cows and every-

thing else. But in late years now the cats—there hasn't been so many cats and chickens and dogs and horses and cows, because they use them for other purposes today. [119] The garbage has interfered with the use of the beaches. Lots of times the people can't bathe there. They can't bathe there when that garbage is there. You can't bathe any better with the garbage in the water than you can when it is on the land, but it is on the land and in the water both. Of course, that brings up a kind of grease or something or other with it when it comes. And I have some little tots that go in there, and they will come out pretty well greased up, because they will bathe, grease or no grease. Those boxes or bed springs or crates, or all that kind of stuff will get fast in the nets, and then if there comes a storm it is going to tear the nets all to pieces. (Fishing nets.) It occurs whenever the conditions are right, the winds and the current. It never fails. [120] I have observed articles with marks or addresses on them lots of times. Curiosity would tempt you to cut them open and look at them a little bit, and they were always billed out of New York. I have seen bundles of letters and I have seen these crates with New York marks on them. I have seen these checking slips, where they would check out the goods and tear off one piece and leave the rest on the paper. These were from New York. There was nothing in that garbage to indicate that they came from passing vessels. [121] The last three years I have not been on the beach. As long as I was on the beach I noticed these identification marks. I would be walking down there along the beach waiting for my boat to come in, and I would see all this stuff. I had no difficulty with launching or landing my boats on account of the garbage. They would float on orange peels or banana peels.

On *cross examination.* There was not any mark of identification on the bed springs that I picked up. [122] I have never been to sea at any time when dumping scows

of the City of New York were in operation. I never was off that far—that is, I mean to the north. I have been further than that off, but not to the north where they dump. Of course, I have seen them when they have been going out and coming in, loaded out and light in: I have seen that.

CHARLES R. ZACHARIAS on *direct examination.* I live in Allenhurst. Allenhurst is just a short distance north of Asbury Park. I have lived there fifteen years. I have been familiar with the seashore in this neighborhood, the northern portion [123] about ten years. I have never seen the scows dump their garbage at sea. I have seen the garbage floating in the sea when the winds are coming from the northeast, east and north. The quantity would vary according to the winds, to such an extent that in some cases the Allenhurst beach was covered with garbage. It consisted of crates of various kinds, orange and grapefruit rinds, onions, potatoes, potato parings—stuff of that sort. I have seen parts of lamb and stuff of that sort. I have seen chickens, dogs, cats. [124] I have seen crates marked with a New York address, New York business houses, and no other address than that, excepting the shipping address, such as crates coming from Florida, with marks on them that indicated that they were shipped from Florida to New York business houses. One sample with identification marks that impressed me very strongly was a bunch of due bills or memorandums from one of the telegraph offices in the Wall street section of New York. I am associated with the government of Allenhurst. For the purpose of keeping its beaches clean, Allenhurst employs one extra man all the season. [125] The number of times it is necessary to clean the beaches varies according to the tides and wind conditions. We do not get any accumulations of garbage from any other wind source than east, northeast or north. There is not anything in the garbage to

indicate that it comes from the vessels passing on the sea. This garbage on our beach injures our bathing business very seriously. The people object to bathing when the garbage is moving, and there is lots of adverse criticism. It affects the development of our community, which is residential. (A photograph is shown to the witness.) That is a picture taken from an airplane. [126] I recognize this building in the foreground or in the center of the picture as our pavilion swimming pool. It was built by the city. It shows the layout of our bathing facilities there. (The photograph was marked "Plaintiff's Exhibit 25 for identification.") Our community is a place made up of summer homes largely. We feel that the homes are about as nice as there are along the shore. We are very proud of them. It is one of the fashionable places along the shore, [127] where there are rather large estates, expensive homes.

I was here in February, 1929. (Photographs were handed to the witness.) I remember this. I recognize all this. I was not present when they were taken, but I have some that I took with another camera at about the same time. I was down at the beach at the time that stuff was there. I recognize every [128] bit of this. (The photographs were marked "Plaintiff's Exhibits 26, 27, 28 for identification." They represent conditions on the beach on February 7, 1929. This garbage condition affects the business on the beach, our bathing business. Without the beach we wouldn't have any Allenhurst. I have been in business along the shore here for twenty-five years, [129] the automobile business. That business has brought me into contact with the people who come here for the summer. At the same time for a number of years I have been a member of the commission government. Complaints come to me through the borough clerk as a rule, and I go down and investigate the conditions on the beach. For the first eight years of my administration I was in charge of the beach. I was

directly responsible for keeping the [130] beach clean for the first four years. I have had nothing to do with it directly since. The conditions of the kind shown in the pictures of February 7th occur frequently every year; every favorable windstorm gives us that condition. A wind that would bring that result would generally come from the north, northeast or east. [131] Within the range of my personal observation, I have frequently seen conditions like that on the beach when the wind was northeast.

On *cross examination*: I cannot tell you when we had garbage on the beach in the last year without referring to files in the Borough Hall. We have had a number of photographs taken. I have taken a number of photographs personally, which are not in the files, and my recollection is they were sent to Trenton several years ago, during Governor Silzer's term. [132] If I had those photographs in front of me I could tell you—give you dates and so on, because they are all marked. I don't know the date covered. I didn't charge my mind with it. The only time we have garbage from any source on our beach is when the wind is in the north, northeast or east. I have no data as to the velocity of the wind at these times. I shouldn't say it is a very strong wind. I am not familiar with the velocity of winds. I am one of the commissioners of the City of Allenhurst. The first four years of my administration, 1920 to 1924, I was in charge of the beach. [133] Since 1924 I have not had charge of the beach. Mayor Selby has had charge of it. Whatever I have observed of materials, those materials when observed by me were always on the beach as shown in these exhibits, excepting I would see them in the undertow—the undertow loaded up with that sort of stuff. By the "undertow" I mean as the waves break and carry stuff in. I saw that off shore. I would be out in the water. The beach at Allenhurst is a private beach, owned

by the municipality, which rents bathhouses and bathing privileges to the public. No residence qualification is necessary to rent a bathing house. I don't know where those papers and crates originat- [134] ed from, except that I saw them on the beach. Many of the residents of Allenhurst are also residents of the City of New York during the part of the year when they are not at Allenhurst. Allenhurst has been a very well developed community for about twenty-eight year. It is practically built up at the present time. Residents from Asbury Park can go up and use that beach at Allenhurst. They have to rent beach facilities. The bathing period at Allenhurst covers the months from June 15 to September 15, approximately. During the balance of the year there is no bathing there. During the last four years I have no knowledge or information as to beach conditions excepting unusual conditions like we had in February, [135] when I covered the beach from Long Branch to Seaside Park, and was very much surprised to learn that to the south here they had practically the same kind of trash and garbage that we have at Allenhurst. That condition is an unusual condition.

On *re-direct examination.* By unusual I mean a greater quantity than usual merely that the quantity was greater. These photographs show a condition that is unusual as to quantity. These photographs are complainant's Exhibits numbers 26, 27 and 28 for identification.

[136] FREDERICK I. VOORHEES, on *direct examination.* I live at Highlands, New Jersey. I am a fisherman. I have been a fisherman [137] about 20 years. We fish usually offshore of the Lightship, off the Scotland Lightship. We go whenever it is fit, whenever the weather permits. I fish with a lobster pot. I am a lobster fisherman. I have seen the garbage scows out there. I have seen them dump. I have never taken so much notice of them, but I

see them every day either going to or coming from, sometimes both ways—or practically every day. I do not see them dump every day. [138] I see them dump whenever I am fishing in that locality where they do dump. Sometimes my fishing is miles away from where they are dumping. They get on the grounds and the tug blows the whistle and they commence to dump their stuff. That's all.

I recognize these scows here as the kind of scows I have seen dumping. (Indicating photographs.) Identification number 5. That is a garbage scow. Identification number 9. That is one. Identification number 1611. That is one. Identification number 3. That is one. Identification number 10. That is one. Identification number 6. I am not so sure about that one, but I think it [139] is. I wouldn't say. That is the character of the scows that I see. I couldn't identify any particular scow, because I don't take that much trouble to look at them. I have seen identification marks on the scows, but I don't remember what they were. There were letters and numbers. Identification number 4. That looks like a garbage scow. These scows go out there and dump every day, I think. I see them practically every day. I most always see three, and sometimes five. Three in one tow, and sometimes another tug with two more. [140] My lobster fishing is done with lobster pots. There is a main line about half a mile long, or a little longer, with a lobster pot tied about every 10 or 12 fathoms apart, a buoy on each end of it, and an anchor on each end of it. They are tied with ropes. There are about 30 or 35 pots on a line.

The scows do not dump in the same place every time. They go offshore to dump around 18 or 20 miles from the Scotland. That is about southeast, or nearly so. They go about a southeast course, but they go north of the Scotland going out, so they are about southeast by east [141] of the Scotland Lightship. If I had a chart here I could probably give you the course from here, but I haven't got it and I have never stopped to look it up. I

don't know anything about what city the dump would be opposite. (Witness was shown map attached to the bill of complaint.) They come right out, just north of Scotland, and they go on the same line right out there about the distance that I say, about 18 or 20 miles. When they come out they are opposite some point along the New Jersey shore. [**142**] The garbage scows go fairly well out. They are about 18 or 20 miles out, I should imagine, from the Scotland Lightship. But the others, the mud scows, don't go out as far as that. (Discussion regarding establishing distance of dump.) Scotland Lightship I think is about three miles and a half from the Jersey shore. [**143**] Where these garbage scows dump I don't know how far they are away in a straight line from the shore. They don't always dump in the same place. They go further sometimes than others. I go out there in thick weather. I cannot tell what they do in thick weather. I can hear their whistles, but I can't see much of them in thick weather. [**144**] We catch more or less of the garbage in our pots. A lobster pot—if you understand how it is built, it is a funnel shaped front, and if that is facing the tide, which it would if there is much tide there, and there is any disturbance on the bottom, anything that works there will go into that pot, and we catch everything there from horse collars to peanuts, or anything else, pretty near. We catch everything that goes to the bottom, old rags and clothes, underwear, corsets, pieces of leather, pieces of wire, pieces of rubber—well, it is most too numerous to try to mention everything you catch. It is a common occurrence in our lobster pots in some parts of the ocean. In other parts it only occurs once in a great while. At times we have difficulty with our lines on account of this garbage. The rags and stuff kind of wrap around the line, and when you try to pull it up it is too heavy and [**145**] you can't get it up. We actually suffer the loss of pots and lines on that account not so very much with me, because I try to stay away from that

location. I have never seen islands of garbage in the ocean after the dumping. I have seen quite some quantity of it floating out there. (Witness shown a photograph, Identification number 21.) I don't think I ever saw the ocean look like that. (Discussion over photograph.) [146] (Witness shown Identification number 19.) I have seen conditions similar to that. Identification number 20. I have seen a lot of that kind of stuff out in the ocean. Identification number 24. I have seen conditions like that (indicating photograph), quite frequently. Identification number 14. I have seen such things. [147] Identification number 15. I don't think I ever saw it quite as thick as that. Number 17, I have seen it in patches like that and larger. (Witness shown a picture that had not been identified.) I have seen it like that. (The photograph was marked "Plaintiff's Exhibit 29 for identification.") I have never taken any particular notice of the areas of the garbage, because I didn't want to see any more of it than I could help. I wanted to get through and get by it. I encounter it in going out and in. If it isn't too thick we go through it; if it is too thick, we have to go around it. [148] I have seen it so thick that I didn't want to try to go through it for fear I would get something in my propeller and get stuck. I have never stopped to measure the area of garbage—never took any particular notice of it. If I come to a bunch of garbage that looks too thick to go through, I simply hunt for a thin spot in it, or go around it. [149] I should say I had seen it four or five or six miles below the Scotland Lightship, probably about south. I have never had occasion to be any closer in shore than that, or very little. As far in shore as I have been, this material floats in at times. This garbage condition on the surface of the water is a more or less regular thing. You see it every day that you are anywheres in the location of where they are dumping. I know that that garbage comes from the scows.

[150] On *cross examination.* Where this garbage comes from is a question that is hard to answer. I have answered it. I know the scows. I have seen the scows dump it, and I know the same kind of garbage that I run through at different times. I have got no mark on to it to tell where it came from or anything about it. I see the scows dump and see the garbage drifting around there, and other scows go out and dump. When, as I testified, I saw this garbage five miles from the Jersey shore, I believed it was the same garbage. But I wouldn't swear that it was. I keep a record of the locations of my lobster pots from day to day [151] in my head by compass and time. I have been through fishing now for a month or two. The last day that I was out fishing was in November of this year. I know where my lobster pots were located at that time. [152] I know near enough that I can go out and throw a grapple and pick up a line that has got no buoys on it. My lobster pots were about 19 fathom deep, where I was fishing in November. I know a little something about the tides out there. [153] I have seen some of this garbage at the time of its dumping. Some of it remains above the water for a considerable length of time after it is deposited from the scows and some of it, I think would sink pretty quick. Most of it would sink pretty quickly, I should say.

On *re-direct examination.* I have seen steamers throw over garbage, but it was such a little lot that I never would see it when I go through it, [154] probably a pail or bucket, or someting like that. I never saw them throw more than a bucketful at a time. The quantities I have seen out there some of the steamers wouldn't be able to carry, hardly. I have seen quantities larger than the steamer could carry. I have never seen anything else out in the ocean except [155] these barges, that would account for the presence of this garbage that I described. If there had been anything out there big enough to carry that quantity of garbage, I was in a position to see it.

For Plaintiff—Frederick I. Voorhees, re-cross—re-direct.

On *re-cross examination.* The coast craft that pass by are not very thick. You probably would see three or four, maybe more, in a day. Some days you wouldn't see hardly any—that is, steamers. You see some barges, too, along with them, coal barges and things like that. But some days there is quite a lot of ocean liners go by, but they go nearly direct offshore. I wouldn't say whether they can be seen from Asbury Park under favorable conditions. [156] I have seen coastwise and ocean going vessels dumping garbage over into the water and I have seen them dumping their ashes, too, but it is very small quantities. I was out there only during the day, but pretty much every day. We go out right after daylight and get in anywhere from 12 or 1 o'clock to 4 or 5 o'clock in the afternoon. I am never out at night.

On *re-direct examination.* [157] The dumping grounds are not in the lanes of the steamships. The scows run southeast, practically, when they go out, and the ocean liners go out from Ambrose Lightship, which is north of the dumps, and then they keep on more to the eastward. The ocean liners go to the north of this dump. They don't all go in the same lane; they go in different parts, but I should say from two to four miles away from the dumping ground.

On *re-cross examination.* [158] That is two or four miles north of the dumping ground. I don't think the Mediterranean vessels take the same course as the north European vessels. I believe that the Mediterranean cruisers and vessels going to southern ports take a course further to the south. They would pass nearer to the dumping grounds than the north Atlantic. They go way in-shore of the dumping grounds. Those are the vessels that I saw dumping garbage.

For Plaintiff—Alfred Schweitzer, direct.

ALFRED SCHWEITZER [159] on *direct examination.*

I live at Highlands, New Jersey.

Q. With relation to Sandy Hook, where is that located?

A. From Sandy Hook, the point of Sandy Hook to the Highlands is about south.

That is in the Shrewsbury River basin. In the winter time I run a machine shop, and in the summer time I am lobster fishing. My lobster fishing season ended the last of October. I am a lobster fisherman from June till October. I go out where the garbage scows dump. I see them dump their garbage. Whenever the tide is going out, they go out [160] with the tide and try to make it out with the tide, so that when they dump they can come home with the tide. During the week, if they happen to get out there when the time seems to be slack, I see them every day I go there. I go with a motor boat, regardless of the tide whenever the weather permits. Whenever I am out there, when the tide happens to be favorable to their movements, I see them dumping. They leave a great big mass that lays there and doesn't sink, and what does sink there is a southeast sea, ground swell, comes out of the southeast and runs northwest, and that ground sea has brought garbage from the dumping grounds to some of my lines in shore four or five miles. [161] I have sailed around it to avoid hitting the wheel, and oftentimes hit the wheel, which caused me to run slow to get home, and I have had to straighten wheels. That is my business, straightening wheels or shafts, whatever damage is done by drift stuff. If you are fortunate, you may go through a whole season and not hit a wheel; again you may go out there day after day, two or three days at a time, and every day hit something. That is a common thing among the fishermen. I have actually seen it drift toward the shore [162] to about five or six miles from the shore. I have not seen it closer to the shore as it wasn't in my course. I go from the point of the Hook to the Lightship, and from the Lightship I run southeast by east. Some-

times almost the whole course out there you have to pick your way so as not to hit logs and driftwood and so forth, and garbage, so as not to injure your boat. I have sailed under such conditions from 30 to 40 minutes. My boat travels about 16 miles an hour, but you can't run that fast through it. You travel, I should judge, about six or seven miles [**163**] an hour—pick your way. For four or five miles I have sailed through that drift of garbage to get out of it. I have seen the garbage on shore on one occasion down as far as Seaside. That is just abreast of Toms River. I have not frequently seen it on the shore because I don't get to the shore here. On the Highland Beach shore we do not see so much. The tide seems to keep the stuff clear of the Highlands, but it seems to come down this way, kind of runs southwest and always strikes in towards the beach—not always, but according to weather conditions, wind and tide. I see in this garbage most everything that can be seen in any garbage can. I have seen rags, cans, bottles, chicken entrails, small dead animals. And we have been troubled off-shore on our lines with sanitary rags and all that trash that wasn't hardly fit to put your hand to. [**164**] When we have a little easterly weather, the ground swell fills up and makes our pots drift on the bottom, and acts the same on the garbage, and then in turn the working of our lines, raising and falling, allows this garbage to get tangled with the lines, which often times causes loss of lines. Year before last I lost two lines. It was impossible to raise the lines to the top, the surface of the water because there was so much garbage you couldn't raise the buoy line. There were 30 traps on each line. We have trouble like that every year accordnig if we have any easterly storm, if there is a ground sea. If there is any size of ground sea, if the storm happens to be off shore, this ground sea travels in. (Witness shown Identification number 18.) I have never seen the surface of the ocean look as bad as that. (Number 13. [**165**] Parts of it I have seen like

that. I have seen conditions like that right after a dump. I have seen conditions like that shown in 18 the length of the scow right after dumping, and it would gradually spread out. I have seen conditions like identification number 12, but not like number 15. I have seen the conditions similar to number 24. [166] Just as soon as the scow gets a chance to clear away from it, it comes right to the top. I have seen it string out in the sea like on number 24 after it has been dumped. The ocean is clear before the scow gets there, and that stuff shows up just after they get done dumping. Driftwood was among the garbage which was dumped. And it would be the driftwood that would damage my boat. [167] It would have to be a pretty good sized piece of material to damage the boat. Other refuse gets tangled up in the propeller and I have to clean it out. I have seen parts of the garbage which I noticed one day, and the following day have seen it again. About south of the Cholera Bank in that vicinity where it has been dumped. [168] All we have to locate our line is compass and time and a stick sticking above the water with a small flag on it, and naturally we are looking for anything, and often times the garbage catches our eye, and in that way we notice different things drifting. I would be able to identify garbage on one day as having been deposited at some time previous on another day by the shape of the article that I happened to see, like a box. I would distinguish that box at the time it was dumped, by the way the top happened to be broke, and in what position it happened to be broken. When I saw it again, it would attract my attention and I would know I had seen it before. [169] The tide and so forth would bring it to a different place, and it happened to be on my course on the following day to run across it, on my course south there in fishing. The object on the second day would be three or four miles from the position where I saw it dumped on the first day. My identification would depend upon my recollection of the shape of the box.

For Plaintiff—Alfred Schweitzer—re-direct.

[170] On *re-direct examination.* This stuff get in what we call the tide streak and forms into a line, and if you see these different objects on one day, then if on the following day you happen to see them in the tide streak, it attracts your attention in that way. If I saw a coffee pot sailing across in front of me, I would recognize that the next day if I saw it. In this garbage floating on the surface I see straw, fruit, like orange peel, small animals, dead animals, and I don't know if I am in position to speak of that—men's safety devices, small crates, and most any- [171] thing that is used as a receptacle to carry garbage—anything that would float. I see large quantities of these things that I speak of. At times I have seen the vessels passing through the field that I sail in. I have seen the vessels throw very little garbage overboard. I would see an individual throw something overboard, but other than that I don't know as I have seen any garbage thrown overboard. It would be impossible for the garbage I have seen in the ocean to come from passing vessels. I have seen the same class of material dumped from the scows. [172] When it first is dumped overboard, it seems to stay in a body the size of the scow and the longer it lays there it goes into tide streaks and drifts wherever the tide may carry it. It strings out in long streaks. Its motion is affected by both the wind and currents of the water. When the tide and wind get in a certain position they will come ashore. It goes whichever way the wind and tide seems to carry it. The condition of this matter that I see is mostly decayed, and stuff that will drift. (Witness shown identification number 12, the condition of the water following [173] the barges, was pointed out.) That is what you call the tide streak. It consists of the garbage and so forth that washes to one side, which forms like an eddy, and the current kind of keeps it one side, and it seems to build up into the slack of the water and gives anything that will float a chance to accumulate and hold together.

For Plaintiff—Alfred Schweitzer, re-cross—re-direct.

There is grease in those slicks. You can just see the top of the water is oily, greasy. It affects my boat when I sail through it at times.

[174] On *re-cross examination.* On this one occasion I was down at Seaside Park on the beach and I saw garbage on the beach. I was not able to identify the garbage as the same I had seen dumped at sea. I never followed it. I wasn't interested enough.

[175] On *re-direct examination.* It was the same kind of material. There is a dump where the heavy stuff is dumped, anyways from a mile to five miles south, southeast of Ambrose Lightship, and that is practically on our good fishing ground, and that is where they dump the heavy stuff, and that is where a whole lot of our lines are destroyed also. We fish for lobsters there and we fish off south of the Cholera Banks. [176] The "heavy stuff" consists of stone, mud, dirt, iron, parts of automobiles. When they dump there, there is a lot of driftwood dumped from them. We know it to be driftwood from them, because if we are working there before they dump, there is a clear sea, and after they dump there is wood shows up.

[177] On *re-cross examination.* I have seen scows dumping stone and other materials out there. They dump on top of the lines and it destroys the buoys and makes it impossible for us to grapple for the lines, due to the fact of the heavy stuff that they dump on our lines. We are not able to grapple our lines, and we simply lose them. This is not the material that I had reference to as destroying our lines and our pots when I testified before. [178] I was talking off-shore, south of the Cholera Banks before, where they dump garbage. On *re-direct examination.* These scows having other refuse come out pretty well every day. I have seen marks on them. One particular name that I remember is O'Brien. They have big letters on them. [179] The letters are

similar to those shown on identification number 6. [180]

On *re-cross examination.* There are two classes of scows with respect to the material they carry that go to sea. One carries garbage and the other heavy material. [181] It is not this material deposited by these scows that does the great damage to the lobster fishermen. The garbage that is wound up on our lines by the ground swell is what does the biggest part of our damage. [182] I have been very close to these scows that dump heavy material at the time of dumping. I can tell what I saw them dump only from what I have seen on my lines the next day. I saw them tripping the fall. [183] I saw the top or capping of the material on the scows. The capping would project up, and it looked like stone and sticks, and occasionally pieces of iron sticking out.

[184] LOUIS H. DE CAMP on *direct examination.* I live at Highlands. I am a fisherman. [185] I have been in that business about fifteen years. I fish for lobsters in the ocean, in the bay. I generally start in the bay in the spring early, and we work on out and go to the Lightship, from the Lightship work on out to the southeast, until as far as the Cholera Banks, sometimes a little further. I go out where the garbage scows dump. I have seen them dump out there, plenty of them. The days I am there I either meet them on the way in or early in the morning I will meet them coming out. I am right there when they dump at times. I fish just a short distance from them. [186] I try to keep at just one side, just out of their line, within a quarter of a mile. I have seen as high as five scows out there in a day where I was fishing. When they dumped these scows most of the material comes to the top. Of course, some of it sinks to the bottom, and then there is a big puddle of it comes up to the top. If you are fishing there for a while, then if you return by there you will still see it coming up, still keep bubbling and floating along on the water. It covers a pretty good space of

water when they dump the scow. When it comes up I suppose it spreads out over a place of about two or three hundred feet. That is altogether in a close mass. After that it strings out, spreads out and floats along, and goes with the different currents and divides up and goes [187] all over. I have seen the mass after I got through lifting my lines. I have run through it when the wind would be a little light. I have seen it pretty close to the shore drifting. It comes into shore if we get an east wind or a northeast wind. We generally hit it coming in this side of the ship, coming in, because it generally works here to the south, generally coming in about southwest. I haven't seen so much of it in the Highlands, because we are out of the way of it. All that comes to shore at the Highlands comes in the current, works to the north and comes up on the shore and works up the beach, and then you get stuff on the beach that comes from the undertow, such as orange peels and turnips and bananas and oranges and chicken entrails and stuff like that, that lays in the underow, that can't float, that will wash ashore. I have seen that. [188] Identification number 22, number 16, number 21 are right after a dump. Number 19 is right after a dump.

Q. How long does it remain in that condition?

A. It will remain that way, I suppose, for probably an hour, according to the wind, how strong it is. If there is no wind it will float around that way and spread out, keep working loose, but if there is a little wind it will work loose a little bit quicker. It won't hold together so much.

(Referring to number 18.) There are water leads in through it. I have seen that condition. I have picked out ways many a time and run through it like that, just little spaces. This is from one side of the scow and that is from the other. That is where the scow just went through. The streak at the top there on number 18 is where the scow has gone through. [189] Number

For Plaintiff—Louis H. De Camp, cross.

17 is the same thing. That is right after a dump, too. Number 22 that is immediately after a dump. That is all together in a heap. (Referring to number 14.) That has been spread by the scow. That happens more or less like that, when it is together like that, where the scow goes through, where it probably all works out at one time. Number 24 that has been dumped quite a little while. That is the way it stretches out after it has been dumped. I have run through it, I suppose, for ten or fifteen minutes, something like that, running as slow as I possibly could run. Of course, if you get that refuse around the wheel, that means that you have got to get out and cut it off [190] or do something with it, because you are stuck and you won't make over two miles an hour if your engine is wide open. I have followed it pretty well in. I have come clear in to the ship pier, inside of the ship pier, to the south of them before I get through it, inside of Scotland Lightship. I have seen it all down below there, all through in the tide streaks, working in here on the south, working southwest, about off of Seabright. I have seen it there within, I suppose, two miles and a half of the beach. [191] The stuff consists of mostly everything, all kinds of refuse. I have seen orange peels and tomatoes, lemons and oranges, chicken entrails and pieces of meat, pieces of grapefruit. [192] I have seen dead chickens and dead cats and dogs and mostly everything that is imaginable. I saw big pieces of meat where it had been dumped and then laid on the bottom and popped up from the bottom, all white, full of gas. It comes to the top and floats around.

On *cross examination.* The distance from the Jersey shore to the Scotland Lightship is two miles and three-eighths, in a straight course directly from the shore. [194] I have occasionally trailed the garbage at sea. Since you asked me I will tell you, I have run pretty well in with them when they have been sailing along, and the stuff

would naturally bubble up and follow the scows pretty well in before they could get rid of it. The stuff lays in a pocket there and keeps drifting out as they go along, keeps working out, bubbling up. [195] I have just simply followed the scows, in behind them sometimes. When the sea has been pretty heavy I generally run along pretty close to the scows, keep pretty well to the leeward of them, so they break the sea. I cannot say how long I have observed the dumping operations of any of the scows because I never took any particular notice of how long I have watched them. I have saw them dump, that's all. I have been working on my gear and saw them dump, and I would be busy.

LARS PETERSON. On *direct examination.* I live at North Long Branch. [196] I am a fisherman. I have been in that business for 20 years. I fish lobster. I go out where they dump garbage. Every time I am out there, if it is clear weather I can see them, every day pretty near. They dump off the shore about 18 miles. They don't dump always in the same place. It would be close by. [197] As soon as they dump it, that stuff floats on top of the water, what will float, and the rest goes down to the bottom, part of it sinks and part of it floats. I have seen conditions existing there as shown in Exhibit 21, just after a dump. I have seen conditions existing as shown in number 15; also number 18; also number 13. I have seen them often. That is the general appearance of the thing after it has been dumped. Number 14 shows it spreading out a little bit. After this stuff has been in the water for a little while [198] it spreads out, gets bigger, and then it drifts. Number 14 shows it drifting according to the tide. I see that stuff drift around there. I remain out there after a dump, out there where the garbage is, sometimes five or six hours, or more than that. At that time it will be moving. The tide and the wind moves it. I have seen it drift toward shore. Mostly it is the tide that causes this.

For Plaintiff—Lars Peterson, cross.

The northeast wind moves it in. I have followed it right on to the beach, all the way in to the beach, [199] at Galilee. The name of the municipality at Galilee is Monmouth Beach. I am able to say that garbage that was dumped from the scows came right in on to the beach at Monmouth Beach. I am still fishing for lobster although I stopped in October or November for this year. I have not seen it this year because I have been going inside this year. When I was going outside, I saw that occur frequently. [200] In the garbage floating around there is oranges, bananas, onions, all kinds of vegetables, grapefruit, tin cans, bottles, bedding, all kinds of stuff, everything that floats on the water. I saw animals in it, and victuals, pieces of meat, chicken and anything of that sort. I have seen marks on that material to indicate where it came from; [201] I saw fish boxes come from Fulton Market.

On *cross examination.* This garbage came in on the beach at Monmouth Beach most any time. I haven't got any dates. I can't tell approximately when it came in. I was at the dumping grounds when the barge dumped the garbage. The dumping took place at all times of the day. [202] Sometimes I have been laying out and the garbage would be drifting by, and then I start for shore, and that garbage would be way in shore. The garbage as to which I have testified came ashore, was garbage that I saw dumped. I went out to the pots at four o'clock in the morning. [203] I saw it dumped about 7 o'clock. I was out there lifting the lobster pots. After I saw the garbage dumped, I deposited my lobster pots. Then I started for shore. I would get back to shore at two or three o'clock in the afternoon. After returning to shore I would pull the boats up and then go for home. I would return to pick up the pots the next day. The next day I would go out the same time. [204] I would arrive out at the pots about

the same time, about 7 o'clock in the morning. Sometimes I take 2½ hours going out, sometimes 3. I would pick up my pots after I got out there. Then I would redrop them again after I had removed whatever had gotten into the pots. I never did drift with the garbage because we use power. I was going to and from a place for the purpose of managing my pots. [205] I was never out on the water at night. When I went back and forth from my pots, I didn't go for the purpose of following garbage.

ANTON HOLGARSON. [206] On *direct examination.* I live at Monmouth Beach, New Jersey. I have been lobster fishing for the past six years. I do my lobster fishing within two miles of the beach, and on out 12 or 14 miles east and southeast, and a little further to the north at times. I never go out where the garbage barges dump. I have seen the garbage in the sea after they dumped it. On or about the 14th day of November we had a hard southeast wind, a little breeze before, and this day it happened to be calm, no wind at all, but there was [207] southeasterly tides running in toward shore, and we run through this different kinds of stuff for about 40 to 50 minutes, but we didn't run so fast, we had to slow down the motor on account of it was such thick stuff. I do not know the rate of speed at which I was moving, perhaps seven to eight miles an hour. (Witness shown pictures taken at sea.) I have seen a lot of this stuff. [208] I would say not quite as quick as either that or this (indicating spots on picture number 24). But of the smaller stuff, something like this here (indicating). It was more sticks of wood, pieces of coal, and there was loaves of bread, papers, and wire for the use in machine shops, full of oil; waste, yes, floating around, and such stuff. There was orange peelings and grapefruit peelings and such stuff, garbage from houses. [209] The day I was speaking of was about the 14th day of November of this year. During the period that I have been fishing out there, I

have seen the garbage condition often. I couldn't say how often, because I never paid much attention, but it was during the entire time that I have been fishing there. I have seen the garbage drift on the surface of the sea. It drift with the tide. If there is no wind, the tide will take it wherever the tide runs. If the tide runs from the east, it will bring it right clean into the beach. I have never followed the garbage into the shore itself, but I have run through it all the way in to the shore, clear into the beach. [210] This was at North Long Branch.

I have taken up papers and different things off the sea to show where it came from. They were letter sheets and things from New York, bundles of papers. The effect of the garbage on my lobster fishing is this: I find the lines wrapped up with rags and different things, and bundles of wire, electric wire. They drag along the bottom if they have a swell, and they get up against the lines and get wrapped around them, and we get up a lot of stuff. That is material that sinks from the garbage. [211] I have had a hole knocked right through my boat, because the propeller picked up a little stick and throwed it around and up against the planking of the boat and knocked a hole in it. I have had occasion to sail around it to get some place where it is not so thick and pick out thin places to sail through. I have seen this garbage on the beach where I launched my boats. At times we have to clear the beach off, so that we can pull the boat around—clean off a lot of stuff that is floating up on the beach. There is lumber and there is paint cans, tin cans, bottles, and of course pieces of lumber. [212] Vegetable and animal matter comes up on the beach. I have seen what they call "slicks" of grease in among the garbage.

On *cross examination.* [213] The date I testified to was around about the 14th day of November. I am not sure whether it was the 14th or 15th. I did not see the garbage scows dump on that day. I saw

garbage for the first time on that day about 5 or 6 miles off from the beach. I was taking the pots in. I was going in with a lot of pots. I was making for North Long Branch, the north end of Long Branch. I was moving at the time not over six miles at the best, and then down to much lower than that, two or three miles. We run through this stuff for 40 to 50 minutes. [214] Outside it wasn't so much, after I run on two hours or more, two hours and a half. The garbage was all the way into the beach. When we struck for the beach it followed us all the way to the beach, I would say about five miles or six, or four. I couldn't tell exactly. I ran through it, came through it. Had to go through it because it was scattered all over the water. On the beach I saw tin cans and empty glass bottles and pieces of wood and small pieces of cork and such things. [215] I did not see large pieces of cork, maybe 10 or 12 inches long by 3 or 4 inches in thickness. I would pick them up if I see them, because I could make use of them. The pieces of cork that I saw were small pieces, ground up cork, broken up like. They had been in ice boxes or something like that, linings of different things. It was garbage all the way in to the shore from that point where we struck into it. It took me 40 or 50 minutes at slow speed to pass through the garbage that I mentioned. [216] My vessel was moving faster than the motion of the tide.

On *re-direct examination.* When we got under way we got through the garbage. The drift of garbage that I struck five or six miles out was continuous all the way into the shore, and I went through it all the way until I got to shore. When I got to the shore, there were parts of it had already gotten there and piled up on the beach. I didn't notice any vegetables and fruit and meat and things like that in the stuff that had already gotten in on the shore. There were cans, tin cans, and bottles and such stuff, pieces of wood and so forth.

On *re-cross. examination.* I saw a large quantity of wood on the shore many times. On *re-direct examination.* [217] The garbage that I see floating out in the ocean, has wood and sticks and boards in it.

CARL HOLGARSON. On *direct examination.* I live in North Long Branch. I am a lobster and net fisherman. I have been in that business ten years. [218] I have discontinued work for this season. I quit the middle of November, about. My fishing season during the year is from the first of April up till that time. I went out to where the garbage is dumped in August, September and October. I have seen them dumping. Sometimes, according to the wind and tide, sometimes they dump at seven in the morning, sometimes at ten, maybe at twelve. I saw them dump almost every day. I have seen the conditions of the garbage in the ocean out there after the dumping. I can show you pictures here that represent the conditions that I recognize (indicating photographs). I have seen streaks of it that looks just [219] like number 19. That isn't so wide. That only runs one way. That is a tide streak. I have seen them for miles long, two or three miles. These tide streaks are not so wide, 100 yards or so. I have seen conditions like number 14 picture shows. It is opened up a little. Those strips can be scattered out for a long distance. I haven't seen them so big, but I have seen them two or three miles. [220] I recognize the condition shown in number 24. That is more scattered out. We try to go through it where if is not so much, but sometimes we have to change our course in order to get to a place where we can get through. And then it slows us down. But we get through. These garbage areas drift with the tide mostly. The wind affects it, wind and tide mostly, because I have drifted with it. I have drifted with the garbage, sometimes to the shore and sometimes off-shore, sometimes north and sometimes south. I have never followed drifts of this

garbage all the way to the shore in coming home on the drift. [221] At different times I have seen it closer a little bit, at different times farther out; sometimes closer a bit; sometimes a mile off, sometimes ten miles off. I have seen it right on the beach. I have seen it drifting from distances away onto the beach. It looked to be the same general mass of garbage. You see mostly everything in the garbage; all kinds of vegetables, cans and bottles and boxes, oil waste and all that stuff. There are particles of wood and boards and all that [222] sort of thing mixed in it, and there are heavy logs at times. I have seen the oil slicks or grease slicks following the barges, like number 12, as it was testified that light place was. When the garbage floats along, after it floats along awhile there seems to be more oil, but after it is dumped I wouldn't see any oil in it right away. The condition of the things that I see there differs. Sometimes they are fresh and sometimes they look pretty sour. I have seen the garbage on the beach. Sometimes it look pretty [223] sour and sometimes it looks fresh. I have seen oranges, grapefruit, banana peelings and that kind of stuff on the beach. I have seen vegetables. Once in a while I see animals. I don't see many of them, though. Sometimes a dead dog or a dead cat. I have seen the beach covered with garbage. Some places it might be a hundreds yards or so, 200 yards or so. Out to sea it interferes with my boats, but not on the beach. Sometimes it interferes with the landing or launching of boats. [224] When that happens we have to go through it and take a chance. We have a man that cleans up the beach. We lease or rent the beach, and we have a man there to take care of that. I have seen some bundles of paper I picked up, and boxes once in a while I have noticed marked New York. There was some papers come from the business places in New York, business clubs or something. I don't know exactly. I have never seen any that came from any other place than New York [225] and Brooklyn.

For Plaintiff—M. E. Snyder, direct.

On *cross examination.* I am in the same business as the previous witness, who is my brother. I am engaged in business with my brother. Our place of business is located at North Long Branch. We have ninety foot of seashore front. The testimony I have given here relates to that ninety foot. I have been drifting with the tide twelve hours at a time. That is the longest I have been with it. You drift with the tide. [226] Whether it would be an outgoing tide differs, according to the tide and weather. The tide does not change every six hours. Fifteen miles from here. I don't think there is any certain tide. It is according to the wind and weather. The tide runs two or three days sometimes, runs south two or three days, runs from different directions for a long time, the same tide. Of course, I can drift as high as seven miles in twelve hours in one direction, going in the tide. I go out with my lobster pots as far as 18 or 20 miles. I go out to the dumping grounds. The greatest length of time I have drifted has been twelve hours. With the nets I have drifted, gill nets. That is in June and July. [227] When I am drifting the most I travel is seven miles in twelve hours, with the tide. The fastest time I have ever made drifting with the tide has been seven miles in twelve hours.

[228] M. E. SNYDER. [229] On *direct examination.* I live at Ocean Grove. I have been general superintendent of the Ocean Grove Camp Meeting Association since April 1, 1926. It is a religious organization, composed of twenty-six trustees who run a camp meeting resort. It is a corporation under the laws of New Jersey. It has been in existence at Ocean Grove since 1869. Its purpose is to hold a camp meeting and provide a Christian resort. We hold meetings from the second Sunday in June until the second Sunday in September. There are numerous meetings being held from time to time during that period, meetings [230] every day, some days as high as 12 and 13.

For Plaintiff—M. E. Snyder, direct.

We have a very elaborate form of concert entertainment and lectures. We usually try to secure the outstanding preachers of all denominations for the summer Sunday program. In 1926 we had Bishop Freeman of the Episcopal Church and Bishop Wilson of the Methodist Church, Mark Matthews, who was then the moderator of the General Assembly of the Presbyterian Church, and men of that type from all over the world. In 1927 we had two bishops. In 1928 we had three bishops, and in 1929 we had three bishops, and likewise the outstanding men of various denominations. Two years ago we started a count system of our preaching services. In 1928 there were 97,710 persons attending the preaching services alone. Last year the number was 85,216. We have concerts such as are furnished by Galli Curci, Madam Schuman-Heink, John McCormack, Kreisler, Marion Talley—all the outstanding artists of the world and sometimes they draw a capacity [231] house, which is about 10,000 people. This represents (exhibiting a photograph), the auditorium of the Ocean Grove Camp Meeting Association. There are accommodations to seat about 8,000 people. (The photograph was marked "Plaintiff's Exhibit 30" and admitted in evidence.) (Exhibiting a photograph.) That is a view of the interior of the auditorium. (The photograph was marked "Plaintiff's Exhibit 31" and admitted in evidence.) Number 31 looks toward the pulpit end. This picture (exhibiting a photograph), [232] shows the interior of the auditorium, looking from the pulpit towards the west, or rear of the building. (The photograph was marked "Plaintiff's Exhibit 32" and admitted in evidence.) Those pictures (numbers 31 and 32), were taken more than two years ago. I can't give the date of those. The exterior of the auditorium was taken two years ago by Adams and Brown. The resident population of Ocean Grove is between 3,500 and 4,000. [233] I have complete charge of the business affairs of the association, and we are a municipality — that is, a quasi-

municipality—and I have the enforcement of the laws. I act really as the mayor, the council and everything in general. Our summer population runs from twenty-five to thirty-five or forty thousand people. We have a great many summer residences there and a great many hotels. The collector informed me that the tax ratables for 1928 amounted to $9,240,295. (Discussion as to relevancy of this testimony.) [235] The collector's name is Edward Sweet. [236] (Further discussion.) [238] The approximate proportion of the property ratables represented by summer hotels and boarding houses is three million [239] dollars. The amount of those tax ratables that are devoted to summer homes for private parties is approximately $1,500,000. The proportion that is represented by purely pleasure resorts is $25,000. Ocean Grove has invested in boardwalks $45,000, approximately. It is very nearly accurate. We have spent for piers and jetties to preserve the beach about [240] $60,000. We have spent for bathing pavilions and bathing facilities or clubs along the beach $50,000. We have a beach frontage of approximately three-quarters of a mile. (The witness produced records to show the amount spent per year for the purpose of cleaning garbage off the beach for years 1926, 1927, 1928, 1929.) (Objection to their admission. Overruled. Exception.) [241] These are the time sheets of the employees of the Ocean Grove Camp Meeting Association who work upon the beach in cleaning. These are the original time sheets, with the original signature of the superintendent of the department on them. There is a column in there devoted to the question of cleaning garbage on the beaches. I have a statement compiled by my cashier, under my supervision and direction, covering the report. [242] I ordered this compilation, ordered the sheets taken out from our other sheets, and then a compilation from that to this, so that I would get the amount each day and the names of the persons involved. And I have extensively checked up to see that they are right.

For Plaintiff—M. E. Snyder, direct.

(Further discussion.) The railroad and other transportation lines that serve Ocean Grove are the Pennsylvania Railroad Company, the New York and Long Branch Railroad Company, McGarvey's Bus Line running from New York City; Gray Auto Line, running to Atlantic City.

I have made efforts to relieve the garbage [243] condition on our beach. I have communicated with the State Board of Health, with the Supervisor of New York Harbor and with the Governor of the State, when Governor Moore was Governor. I am personally acquainted with the garbage conditions. I have seen the beach at times littered, in some instances a foot deep, with garbage consisting of orange skins, grape skins, onions, potatoes, practically all kinds of vegetables. Sometimes there would be a flower or two in the garbage, lots of bottles, cans, broken boxes, wood. [244] I have found, as I have casually gone over it, in some instances restaurant tickets from New York, crates that bore the delivery mark of New York on them. The bottles usually had the labels off, so we could not tell from whence they came, excepting those that had them blown in. The restaurant tickets came from a Vesey street restaurant in New York. I can't give you the address that I found on the boxes, due to the fact that I destroyed all of these things when I was not able to get results. This strewing of our beach with garbage occurred quite frequently in 1926. Each year since then it has been in diminishing quantity. [245] (Further discussion about reading into record from original records. Decision to admit compilation.) [248] (Taking sheet for 1926.) This shows the total for each week spent for removal of garbage. The first column shows the individual payments to employees. [249] The second column shows the amount per week to all employees. The total shows the amount for the entire year to all employees for this particular purpose.

Mr. Minard. I offer the 1926, subject to your verification on the figures.

For Plaintiff—M. E. Snyder, cross.

(The paper was marked "Plaintiff's Exhibit 33," and admitted in evidence.) All the sheets for 1927, 1928 and 1929 are the same. They have been compiled in the same manner. [250] (The papers were marked "Plaintiff's Exhibit 34, Plaintiff's Exhibit 35, Plaintiff's Exhibit 36," and admitted in evidence.) The amount spent in 1926 for garbage cleaning was $430.08; 1927 was $291.33; 1928 was $297.84; 1929 was $194.90. [251] (Photographs were shown to the witness.) That is a picture of the Ocean Grove beach looking toward the north end. [252] I have seen the garbage floating on the ocean, off of the beach, on the surface and in the undertow. It has interfered with bathing on our beach at times. It comes in with northeast and east winds.

[253] On *cross examination.* I am a doctor of philosophy, but I belong to the clerical cloth. Ocean Grove is a very famous ocean resort during the bathing season. The railroads in and out of New York advertise excursions there during the summer season. There is no boat landing at Ocean Grove. The nearest that I would say would be the Highlands. People come from Philadelphia as well as from New York and all over to Ocean Grove during the time that the religious and educational campaign or program is on during the summer. [254] They come from practically all over the world. Quite a few of those who come there, come there with the intention of using the beach and bring their own baskets of food and provisions along with them. I haven't any statistics which would enable me to tell just exactly the total number that use the beach at Ocean Grove as a place for eating their own provisions while there on a day's outing, but the number is comparatively small. There is what we call an excursion restaurant at the north end, but that is a pavilion that takes care of its own refuse. It is my observation that garbage comes upon the beach from some source or other only during such time as there is a north

or northeast wind blowing. [255]. At all other times of the year there is practically no garbage from any source upon our beach. Of course, there is some refuse left on the beach every day by the visitors, but we have men whose sole duty it is to clean the beach every morning. They are not included in this tabulation. This tabulation refers only to those conditions that have been created by northeast or easterly storms, which bring in the great bulk of garbage.

Q. So that if we examine these sheets that have been offered in evidence, they will cover only such dates as there has been a northeast or east wind and garbage has come upon your beach? Is that correct?

A. Well, I cannot say as to the wind, due to this fact, that the collection of garbage is made after the storm, not during the storm.

Q. Well, then, it will be the day following?

A. Sometimes immediately following; sometimes not immediately; because I have allowed it to remain on the beach so that the authorities could see it.

I have permitted it to remain on the beach after it has been deposited there by a storm, sometimes as long as two weeks. By referring to those sheets [256] I cannot point out those dates when it has been on the beach for two weeks before it has been removed.

Quite a large number of people from New York come to Ocean Grove. I do not know the proprietor of any restaurant or restaurants in the City of New York who lives in Ocean Grove. I would not be in a position to know that fact by reason of my official connection with the Ocean Grove Association. I am very familiar with the members of our association. I am willing to state now that none of the members of our association are connected with a prominent restaurant in New York to my knowledge. If that were the fact, I would know it, unless they might be a stockholder. [257] There is no member of the association who is connected, to my knowledge, in a

For Plaintiff—M. E. Snyder, cross.

managing or directorial capacity. There is no one I know of in the Ocean Grove Association who is connected with a hotel or restaurant in New York. There is no resident now of the Ocean Grove section that is connected with business concerns in the hotel and restaurant line in New York that I know of. I have lived in Ocean Grove myself since the 15th day of March, 1926. I lived in Haddon Heights the year preceding that. That is about six miles south of Camden, New Jersey.

The figures covered in the compilation relate only to garbage deposited upon the beach by storms. We have [258] men whose sole duty it is to clean the beach every morning, and they do it after the picnickers and the bathers. But when a storm comes in, they can't handle the proposition. Then we have to turn to other forces. In the fall and winter and early spring months there are no picknickers, so that there is nothing goes on the beach excepting that which comes in from the sea. This is always the result of a storm, and particularly when that storm comes from the east or northeast. These statements here show the length of time these men have worked daily. Those time sheets—if I can have one, I can illustrate—those time sheets indicate the hours that they have spent on various things. [259] Now, that man spent five hours on parks and lawns (indicating); that man spent four hours on the beach front, Saturday of the week. We pay on Saturday morning, and it comes up to the preceding Friday evening. That is the way it is divided right straight through. The men whose names were on this list belong to our regular force. These men at other times spend part of their days doing other work. Take the sheet of the week ending July, 1929, Charles Parker, Saturday. He was engaged five hours painting fountains in Founders Day Park; four hours clearing driftwood off beach.

Q. Now, then, that clearing shows that he was not removing any garbage on that day from the beach, does it not?

A. Yes.

Q. But this period of time is included in the compilation, is it not?

A. I can't answer that.

Q. Well, you had this checked back to some extent, did you not, doctor?

[260] A. Yes, but I can't tell you which ones I checked. Charles Parker. That is enumerated "wood." That is driftwood all the way down (indicating on paper).

Q. So that, in view of your statement, doctor, that for a period between July 19 and September 6, 1929, there is included in the total compilation as to which you have previously testified, figures that relate to the removal of driftwood and not garbage?

A. Driftwood and garbage as well.

Q. Where is there any statement there to indicate that garbage was removed?

A. There is no statement on this particular sheet relative to that, but from my own personal observation I know there was garbage there at the time.

[261] I know the condition of the beach. I am on it every day half a dozen times. I was on that beach on July 19 at various times of the day. I observed wood. I observed orange peels and grapefruit skins. I have a clear recollection of the condition of the beach at the time. I can't say as to the exact date. The reports indicate driftwood, but in the driftwood there is garbage mixed.

[262] On *re-direct examination.* The driftwood is frequently a part of the garbage itself that comes in.

On *re-cross examination.* I cannot recall the date, but one storm drove in such an immense amount of garbage of all sorts, and driftwood with it, that it filled up the flume

at the south end. It represented easily a hundred [263] wagonloads of trash and stuff, and the only way we could remove it was to open the lake and let the water of the lake force that out into the sea again, so as to get it on the beach where it could be collected. I presume the driftwood would collect whatever it came in contact with.

HERMAN STICKLER. [264] On *direct examination.* I am a photographer, employed by Cole & Company of Asbury Park. I took some pictures for Ocean Grove of beachfront conditions, showing the people, the crowds. We have taken photographs right along for the last 20 years, along the beach front. I took that picture. (Exhibiting photograph.) That was taken in 1925, but I can't say positively.

[265] GEORGE L. GOODRICH. On *direct examination.* I live at 29 Ocean Pathway, a block and a half from the beach, Ocean Grove. I have lived there nine years. I live there the year round. I am familiar with the beach front at Ocean Grove. I have seen the garbage on the beach at Ocean Grove, lots of it. [266] It is my custom to go to the beach before breakfast every morning, and, of course, I notice the shifting sands and the garbage and rubbish on the beach, and after a storm there is more or less garbage on the beach, and oftentimes out in the water, in the troughs. You can see it coming in in the troughs of the waves, and this garbage is strewn, as a rule, up as far as the tide goes on the beach, sometimes almost to the boardwalk. It is there at times in great quantities. Here within the last year, I suppose the association had to take off ten or fifteen wagon loads of it, and it is a good deal of labor for them on account of the fact that it has to be carried up. They have no driveway on the sand, and it is carried up in boxes by the association men, and I have seen them work for days on it. It consists mostly of all kinds of decayed vegetables, grapefruit

skins, orange peel, cans, boxes, bottles—a great many small tins I have noticed, such as these Babel tins and Gresolvent and several of those where the labels can't be washed off, where they are printed on the can. But I never go down on the sands myself, because there is quite a long stairway. [267] I have not examined or seen anything on the beach that would identify its origin, the place of origin. Most of these are made by national concerns. The garbage just litters the whole beach with all this rubbish, and I am in a section there where there are a great many hotels, and I have often heard patrons of these hotels complain about the dirty water and the dirty beach. Of course, the association has to clean that up so as to make it presentable.

On *cross examination.* At times the bathers have been prevented from going into the water because of large quantities of oil in the water. [268] When they came out of the water they were covered with sort of a tar. And I have also been deterred from taking baths on account of the dirty beach. The water — as I say, it lays in these troughs between the rollers, as we call them, and just floats there. Sometimes you can get out beyond that. That is what I have noticed after a northeast storm. I have observed these conditions about which I have testified from the boardwalk. I am down there quite a little. I very seldom go down on the sand, on account of climbing the stairs, and I can't go up and down stairs.

WILLIAM PARKER. [269] On *direct examination.* I live at Ocean Grove. I work for the association. I am sort of a superintendent—that is, foreman like. I have to kind of look after the men and see that they are all working. I have to go down there and see that the beaches are cleaned up. I have been engaged in that work for a little over ten years. I am familiar with the garbage con-

ditions on the beach. [270] It is like the rest of them said, it comes in on east and northeast storms mostly, always. After a big storm we generally have the beach to clean up, and we have garbage of all descriptions. I have seen banana skins and bananas, oranges, cabbage, onions, apples, potatoes, pineapples, chicken, come up with it, you know. Now and then we got a dead dog or a dead cat and bury him or take him away. This stuff we have to carry it all off, you know. It is quite a job. It is according to how big a storm we have. We have an awful lot of it sometimes. I couldn't say exactly how many loads we have to take away. We carry it out and put in on trucks and wagons and cart it away. I cannot recall how many truckloads were required to remove any particular job, [271] because I never kept tally of it. I have nothing to do with these time sheets. I can't read nor write, so I have nothing to do with them. I am the William Parker whose name is referred to in some of these sheets here. This garbage that comes in on the beach is mostly decayed stuff. There is always an odor from it when it is in heavy. It is not a very pleasant odor. [272] It interferes with the bathing. I have nothing to do with the bathing part. I have seen the garbage floating in the water in the undertow. You couldn't tell exactly how far, on account of the rollers coming in. I have seen it in the rollers. [273] (Discussion between counsel on form of question. Exception.) [274] On *cross examination.* I stated I can neither read nor write.

GEORGE T. MOSTON. On *direct examination.* I live at Ocean Grove. [275] I am a retired physician. I have lived at Ocean Grove for five years continuously, and I was down here about three years in the winters before that. I am familiar with the beach at Ocean Grove. I go there in the winter-time two or three times a week, but in the summer-time almost every day. I am a constant bather in the summer-time. I am quite familiar with the

garbage conditions on the beach. At times the beach is literally covered with garbage, grapefruit and orange peels and onions and feathers, tin cans and bottles, and of course slivers of wood, parts of boxes mixed in. Those are the principal things. Of course, there are always clam shells and things like that. This material interferes with the use of the beaches in bathing. I have gone in when it was so nasty that I would just go in and come right out again, [276] because you can't help but get that in your mouth when you go near the rollers. It does interfere. There won't be but a very few go in on those days. There would be the grapefruit skins floating there, and, of course, in the rollers it makes a foam, a nasty, yellowish looking foam at that time. I didn't take any particular notice of the number of times, but I should say it happened two or three times during the summer—say, twice, possibly. The bathing is interrupted usually just for one day. It usually clears up in a day. You understand during the storm you can't go in bathing, anyway. The ocean is too rough, and by the time it gets quieted down then there is this garbage. It usually follows the storm, because the ocean is so rough during the storm that it is all mixed up, and it don't settle. [277] A perfectly clean beach would be more attractive than a dirty beach. This is the subject of complaint in the community among the summer people. They all tell me, "You notice how dirty the beach is today, nasty." I have never identified marks or names or addresses on any of the articles in the garbage, because I have never tried. I didn't know that I was going to be called on. I never took any particular notice to see where it came from. I have observed quantities of material, garbage, floating from the ocean to the beach. I have seen it, say, a few hundred feet, as far as you could see easily. You couldn't see that probably in the waves more than a couple of hundred feet, I wouldn't think. It was floating in masses on the top and mixed in the waves at the time I saw it. [278] Some of it floats

and some of it is in the water. I have seen it reach as far as you could see, up Asbury and down to Bradley Beach, a continuous streak of it. I remember one spell in particular when it was covered, literally covered almost to the boardwalk for 20 or 30 feet wide, 20 feet wide, anyway, the whole length of the beach, 15 or 20 feet wide. Of course, I didn't measure it. That is only a guess.

On *cross examination.* This description I have just given relates to the beach proper and also to the condition out in the water. [279] To observe this condition, I have often walked on the beach, on the sand, and otherwise on the boardwalk. That was at Ocean Grove, Asbury Park and Bradley Beach. That was at different times. I claimed that I can see at a distance of two or three hundred feet from high water mark. That is only a guess. [280] I think I can see a grapefruit and orange peel 200 feet. At that distance I saw something floating on the water, from the edge of the water to that distance. I couldn't swear that I could see any beyond that. I have walked the length of the beach north and south. [281] Ocean Grove, I believe, is something like three-quarters of a mile. Possibly I have gone half a mile down Bradley Beach and probably three-quarters of a mile up as far as here, and maybe further from Ocean Grove. I couldn't see any greater distance than 200 feet from any particular point of observation. That would apply north and south, as well as out in the ocean. The sea is very rough during a storm at Ocean Grove. It has an intensity of agitation as great as any point along the Atlantic seaboard. I don't know whether the municipalities do prohibit bathing or not at those times, but, of course, nobody does bathe at those times. I don't think it is necessary to prohibit them. They wouldn't dare to go in. [282] From the life saving station they patrol the beach. There are not many of them at this point along our beach. You see one usually. I can't say I have seen lifesavers along

the three beaches that I have mentioned, Asbury, Ocean Grove and Bradley Beach. I have seen them along the Ocean Grove beach. I have never seen any lifesavers at Asbury beach, because I don't go so often along Asbury. [283] After a storm I will take a walk up the beach to see the damage that has been done. That is quite natural. There is considerable damage done by these storms sometimes. I can't say that I have observed any within the last year, but I have during the last five years.

JAMES HURRY. On *direct examination.* I live at [284] Ocean Grove. I have been in the real estate business in Ocean Grove for fourteen years. I am not familiar with the garbage condition on the beach at all. I have seen it sometimes, probably only once or twice a year that I get down. I do not know anything about the effect of the garbage on the beach upon the development of our community. We have complaints come in about it through out clients. It don't have any effect on my business. Only the complaints we have during the summer about it is all. So far as interfering with the business is concerned, it doesn't interfere.

[285] CALVIN REED. On *direct examination.* I live in Ocean Grove. I have been street superintendent of Ocean Grove for fifteen years or more. I have to keep tab on the beaches all the time. I have the superintending of the cleaning of the beaches. Following a northeast wind that probably would last for two tides, we can almost count on every time going down to the beach to cart off the garbage and trash. Our beach is about 3,600 feet long. It is about 100 feet wide [286] from mean tide to the boardwalk, and following these northeast blows it is just covered with garbage and trash from one end to the other. Of course, we try to keep our beach clean all the time, and we have to get right down and gather it up.

For Plaintiff—Calvin Reed, cross.

It consists of almost everything you can think of. The garbage is partly decayed oranges, grapefruit, bananas, onions, cabbage, turnips, potatoes, water melons, cantaloupes—almost all of that stuff. Trash comes in with the garbage such as bottles, barrels, boxes, and wood of most all descriptions, that is, lengths, barrel staves, box staves, parts of boxes and bottles, everything from a five-gallon bottle down to one as big as your finger. I kept a record last summer of one instance where we carted four loads of garbage off of our beach. Now that load, I mean, is a yard and a half dump wagon. That was nothing [287] but garbages, bananas, oranges, grapefruit, apples, all such stuff as that. We have a place over at the upper end of town where we cart it. The garbage of our own town is taken by a contractor over in Ocean Township.

I have been in Ocean Grove for 33 years—or 53 years. I have been connected with the street work for 15 years as street superintendent, and I have been working for the association for 33 years. Boxes and barrels and things like that, they have all got the manufacturer's name on them. I cannot recall any places that were marked on any of these articles any more than the manufacturer's marks on the boxes, like Babbit soap or something like that. [288] I have never picked up any papers that had any addresses on them because I never go through the trash and hunt it. We have to go down there and get it off the beach. We take it off the beach with rakes, pitchforks. We have boxes with rings on them and load the boxes up and two men carry the box up and dump it into the wagon. The garbage when we pick it up off the beach is partly decayed. It does not leave any ill effects upon the beach after it is removed because we rake it right up clean and cart it away. I do not remember a storm in February of this year, around the 7th. [289] I think we had to cart it off twice anyhow this summer. I know after one

on Friday night we had a dickens of a job to get on the beach on Saturday.

On *cross examination.* The garbage always comes in on either a north or northeast or east blow. It comes in on about the second tide. I said the garbage in Ocean Grove is carted away by a contractor. It is taken up every day for six months and twice [290] a week for six months.

HERMAN STICKLER. On *direct examination* (resumed). (Witness was shown Exhibits 31 and 32, pictures of the interior of the auditorium.) The date that I took them is on the picture. (Witness shown a picture No. 606-E.) That shows the boardwalk in the vicinity or right in front of the North End Hotel, and it is a view of the boardwalk looking north. It was taken on September 1, 1924. [291]

On *cross examination.* I use a regular view camera. The size of the plate of my camera is seven by eleven. This is a picture produced from the plate. (The photograph was marked "Plaintiff's Exhibit 37" and admitted in evidence.)

On *re-direct examination.* (Witness shown another picture of the boardwalk.) I took that on September 1, 1924. It shows a view of the boardwalk at the foot of Ocean Pathway, looking north toward the North End Hotel. It also shows the beach. [292] (The photograph was marked "Plaintiff's Exhibit 38" and admitted in evidence.) I took picture number 607-A (exhibiting photograph) on September 1, 1924. It shows the North End Hotel with the pavilion adjoining on the beach, and it is a view looking north. It also shows a section of the beach. (The photograph was marked "Plaintiff's Exhibit 39" and admitted in evidence.) I took picture 6069-A (exhibiting photograph) on September 4, 1924.

For Plaintiff—William J. Meyers, direct.

It shows the Ocean Grove beach taken from the [293] south end pavilion and looking north, and also showing part of the boardwalk at the fishing pier at Ocean Grove. (The photograph was marked "Plaintiff's Exhibit 40" and admitted in evidence.) I took picture number 5464-A (exhibiting photograph) on September 4, 1923. It shows the beach taken—and the boardwalk in Ocean Grove, taken from the south end pavilion and looking in a northwesterly direction. (The photograph was marked "Plaintiff's Exhibit 41" and admitted in evidence.) I took picture 5472-A on September 4, 1923. It shows the beach and the surf at Ocean Grove, and [294] it is a view taken from the south end pavilion looking more in a northeasterly direction this time. (The photograph was marked "Plaintiff's Exhibit 42," and admitted in evidence.) I took number 5473-A on September 4, 1923. It shows part of the beach and the ocean front in Ocean Grove and near the south end pavilion, and it is a view looking directly east. (The photograph was marked "Plaintiff's Exhibit 43," and admitted in evidence.)

On *re-cross examination.* We took those for the Ocean Grove Association at the time. [295] We were requested to take these pictures by the association. They did not necessarily designate the spots that they wanted taken. They left it entirely to our judgment, for their advertising purposes. These pictures were used, or intended to be used, for advertising purposes for Ocean Grove. That applies to every one of these pictures, the crowds on the beach as well as the boardwalk pictures.

WILLIAM J. MEYERS. On *direct examination.* [296] I live at Monmouth Beach. I have been in the fish business for six years at the Lockwood Seafood Market, right on the beach. Before that time I was in the same business, fish business for the last forty years. I am a little bit familiar with the conditions at sea. I am right at

the water front all the time. I know something about the dumping of the garbage scows out in the ocean. I see them going up every morning and coming back empty. I see the garbage on the sea. Right in Monmouth Beach, loads and loads of it; tin cans, orange peel, grapefruit, dead dogs, cats, chickens, grapes, all kinds of crates from New York, bottles, electric light bulbs, old beds. I have seen them pull old beds out [297] of the fishnets at Galilee. There are fishing pounds at Galilee. Five men there have fishing pounds along the coast. Bed springs and boxes get into the nets and tear them all to pieces. The garbage has this effect on the beach, that you can't hardly walk at times on the beach when there is a northeast by east wind. These articles of garbage that come on our beach are decayed, very much decayed. We bury them generally, get down there and scrape up the sand and bury them right in the sand. We have this condition every time there is a storm northeast by east. I have examined articles in the garbage that appeared to have names or addresses on them. I have taken home loads of wood with different [298] addresses from New York concerns, fruit dealers, crates, you know, with names on them, that come from Washington Market and so forth, and around that way. I picked up a load of paper one day, but I didn't think I was going to be called up or I would have kept it. There was a lot of newspapers in the bundle and a lot of old clothes, cloth, you know, wrapped up as if somebody had chucked it over. I have never been out where the garbage is dumped. I have never seen them dump, but I have seen them go on out past the market and back again. My market is on the bulkhead at Galilee, right on the shore. You have to go up the steps to get to it. I have seen the garbage in the sea before it gets to the shore. I have seen it run from, I would say, 300 [299] feet. I have seen it that distance out with

the naked eye, and about a mile long to my knowledge. On *cross examination.* I don't go out to sea.

ALEX OLESON. On *direct examination.* I live at Monmouth Beach. I am a fisherman. I fish for lobsters and fish. I go out to sea in my work. I have been in the fish business for [300] twenty-five years, every season, every summer. Our season is sometimes five months of the year, sometimes the whole year round. My work takes me out where the scows dump. I have seen them dumping garbage. In the summertime I generally see them every time I am out there which is every day when the weather permits. After they dump, it might sink first, part of it, like the heavy stuff, like mud, broken up bricks, sand and different materials like that. That sinks, and after that sinks and hits the bottom in big loads like tons and tons in one lump—when that hits that muddy bottom, all that old stuff that is decayed and oily, the oil floats up in bubbles, and that brings the oil to the top. The garbage, the part that floats, might sink a ways from the dump when it slides off the scows, but it will float up again, particles will [301] float right to the top of the water and others you can see down in the water, eight or ten feet down, drifting. (Witness shown Exhibit 16.) (Indicating.) That looks pretty heavy, but right by the scows when they have just dumped it will float up like that in back of the scows. (Referring to Exhibit Number 17.) I have seen it as heavy as that along the beach. I have seen it when it has reached the beach as heavy as that at Monmouth Beach, right in Galilee. I have seen those grease slicks quite often. (Referring to Exhibit Number 21.) [302] I have seen it just as solid as that, but of course I couldn't judge the area. I have seen conditions as thick as that in Exhibit Number 14.

I have seen conditions like Exhibit Number 24. It has happened several times that we have had to stop

the boat and take out the oars and row through it. We couldn't run the motor. There were boxes, barrels, blocks of wood and all kinds of garbage mixed in with it, some other little things. Some of it will drift right into the beach. I have run in garbage right from the dumping ground on it, and when we get to the beach, I always landed the boat on the beach till last summer, and when we get to the beach at times we have to make circles to pick a place that we can get into to land the boat, and then the first thing we have to do is to clean the beach so we can roll the boat up on the rollers. It is caused by dumping stuff that drifts in on the beach, and we can't lay our planks on the beach and roll the boat with- [303] out clearing up the pathway for it. I have seen the floating garbage in streaks, what we call tide streaks, and that streak at times will run right from the dumping grounds into the beach, or it might run in the opposite direction. I have seen a streak of garbage from the dumping ground to the beach off and on, heavy in places, but the width of the streak. I have driven my boat along one of those streaks going in quite often. Sometimes we find pieces of cork from old wrecked ice boxes, that have been used for packing. We pick that stuff up. I have made lots of buoys out of that cork. As to articles I have seen in this garbage that is dumped out there to sea, in the first place I will say anything that can be found in the kitchen will be discarded to be dumped, in the line of fruits, decayed fruits, oranges, apples, potatoes, cabbage, lettuce, grapefruit, bananas, pineapples, [304] and many other things that I couldn't describe. I have seen marks that would indicate names or addresses on crates, egg crates, orange crates and things that have been shipped from the south to markets around, Fulton, Washington Market. Washington Market is located in New York.

For Plaintiff—Alex Oleson, cross.

This garbage has a lot to do with the lobstering and the landing on the beach. Sometimes we got the lobster traps half full or [305] almost full of potatoes, turnips, carrots, and that stuff is not very sweet to pick out. You have to pick it out by hand. It interferes with our lines. Sometimes we get—well, I can state from the frame of an automobile down to a sewing needle. The articles that sink cut the line and you may lose your rigging. I fished right around the dumping ground last year. That was about the only place where we could pick up a few lobsters, and by the time I took in the rigging after five months' fishing, I had lost 85 pots on account of that dump, old iron in the water. It rusts up and gets just as sharp as a knife and will cut the line. The line will get fast so that we have to part it in order to get back part of it. If we throw a grapple out, a little anchor that we use for picking up lines again from the buoys—if we put that overboard we may lose that, too. It will hook fast to something and we can't unhook it again. The garbage affects the beach. In the first place we lose a lot of time by cleaning the beaches so we can moor our boats up and down—broken bottles, tin cans and stuff like that, which is hard on everything we work with—very bad for the boats. If a [306] bottle breaks under the boat it might cut through that half-inch cedar plank. Cedar planks are very soft. One day I stepped on a broken bottle while I was landing a boat and I had to go to the hospital and get ten stitches put in my foot. If it had been in some visible place it would have been 20 or 25 stitches, but under the foot it doesn't show much.

On *cross examination.* (Referring to the map annexed to the complaint in this action.) Last spring when I put out my rigging I started right out from Sandy Hook. Here is the Light whistle. (Indicating

on map.) Right between the Light whistle and the beach I put the first gear in. Then I went out ten minutes further and put out another gear, and still ten or fifteen minutes further southeast and put the third gear. Then I went out about 12 or 15 miles southeast and put out two more gears, about two miles between the two gears. That is right inside the dumping ground, where they dump the garbage. The nearest anchor to the Jersey shore is in the vicinity of the Scotland Light Vessel. [307] And the furthest east anchor, at the end of the line set furthest east from the shore, is about 18 or 20 miles southeast—south by southeast.

We build the lobster pots of lath, cedar lath. We cut three cross pieces and we nail the lath on there to make the bottom. Then we cut the hooks, three hooks, and the hook is put on there like that (illustrating), nailed on both sides of the bottom. It measures 18 inches—some 16, some 18 inches—from the top of the hook to the bottom here. Then we put the three hooks on flat all around, to bring this flare on the sides. Then we make a door the width of three lath. Then we tie a piece of rope on here about 7 or 8 feet long, and we tie that on to the main line. We feed out the main line enough for 30 or 40 or 50 pots and tie them on. We have a mark for each 12 or 15 fathoms along this line, put on a little piece of cord so that when we pull along it we know where that pot goes, and we put on 15 or 12, or whatever we have. When we put this on the ground—say this is a piece of iron of an old car or something, I run my line out here, and it might land on top of that piece of iron so that it clears it two or three times, and the next time I come there and put the line over it may [308] land alongside of this iron, and when the tide sets back again it gets caught under here, and I may have to leave that gear for a week,

maybe a month, because I can't get it up. That is quite a loss. I am losing a lot of time that day. We don't get half of the work done that we ought to do, and taking a chance on losing our rigging. During the war we had to get two or three different licenses—not exactly a permit to fish in territorial waters. That we don't need now. Any citizen can fish from the beach and out in the ocean. We don't need any license or permit or other governmental authority for casting our lobster pots at the points where I have testified I have done so now.

On *re-direct examination.* [309] Passing ships will throw some of the garbage overboard, but it wouldn't amount to enough so you could find it in the ocean. I can't help knowing where the garbage that I see out there comes from, because we see the tugboats towing the scows out from New York. Many times, hundreds of times when I have been up to Fulton Market with my lobsters I follow the scows all the way out, or all the way in—either way with my own boat. The lobsters that I gather, most of the time I run them right into Fulton Market, once or twice a week. We generally have our line in 30-foot gears. [310] A gear is a continuous line. They are separated from each other.

WALTER ROE. On *direct examination.* I live at Monmouth Beach. I have been a painter for about five years. I am down on the beach a good deal. The garbage condition is very fierce along the beach, very bad. I have been familiar with it [311] for the last 18 years between North Long Branch and Monmouth Beach. I have seen a lot of potatoes, oranges, grapefruit, bananas, vegetables and meat of all sorts, dead dogs, dead cats, on the beach. (Witness was shown a card.) I am Walter Roe of West street, Monmouth Beach. I have seen this card before. I picked it up in a bottle on the beach just south of

Valentine street, Monmouth Beach. On the 4th or 5th of June, 1929. The date on it is when I mailed it to Mr. Smack at Seabright, [312] as it is addressed there, [313] (Discussion. Objection to admission of card. Overruled. Exception.) (The card was marked "Plaintiff's Exhibit 44" and admitted in evidence.) The rubber-dated stamp on that card is June 2, 1929. I found it on June 4th or 5th, two or three days after it was put in the garbage. I have forgotten just when it was. The date that is on the bottom, the 10th, is the day I mailed it to Mr. Smack.

Mr. Crowe. Isn't that the date when it was found?

A. No.

Mr. Crowe. Well, he mailed it on June 12th. The date [314] when found, this exhibit shows is June 10th, which is eight days after the date when it was deposited.

A. That was the date that it was sent to Mr. Smack.

Mr. Crowe. Well, the postmark is June 12th. That is the date you sent it to Mr. Smack, isn't it? Examine it. What is the date of the postmark?

The Special Master. Have you finished with him?

Mr. Minard. No, I am not through with him.

This is the card that I received out of a bottle. The beach where this bottle was found was in a very bad condition. There were tin cans, vegetables, potatoes, onions, radishes, lettuce, oranges, bananas, grapefruit, bottles. The garbage [315] was all around where I picked up the bottle. Very heavy quantities of this material comes up on the beach there. The wood part they gather up and burn it, and bury the cans. When it arrives, it is in a very odoriferous condition. The condition of garbage on the beach is according to the wind. Sometimes with a northeast wind, east wind, southeast, it comes up very heavy. I haven't seen the garbage dumped. I have seen the scows passing by about a mile and a half off, something like that, but I couldn't catch the names of them.

For Plaintiff—Walter Roe, cross—re-direct.

On *cross examination.* [316] I am employed by the Central Railroad in the summertime. When I am not employed by the railroad, I am employed over at Fort Monmouth by the Government, the Quartermaster branch of the Government Service. I come under the jurisdiction of the Army, the United States Army. I am a civilian employee. [317] I have been in the service of the Army for the last two winters. Before that I was employed by the Central Railroad as a painter. I am now employed as a fireman for the winter months. (Witness told to examine card, which had been marked "Plaintiff's Exhibit Number 44.") The card is just the same as it was when I found it, when I put the date and my address on it. The date is June 10th.

Q. Now, this card bears another date, presumably the date when it was filled out and deposited. What is that date?

A. June 2nd.

Q. And the postmark on this card is what date?

[318] A. That was the date, June 12th.

This card was contained in a bottle, just an ordinary soda bottle, I should judge about six or seven inches high—between six or seven inches. I would say the bottle was at the bottom about an inch and a half wide. If you want the bottle I can get it. I have the bottle home. (Discussion between counsel.) [319] At the time I found it there was a cap on the bottle. At the time I found it the bottle was on the beach. That was the first time I saw it.

On *re-direct examination.* I kept this card probably about four days before I mailed it.

Q. Was there a particular reason why you kept it?

If I happened to have went away the day after and I couldn't get back—I was painting on the railroad and I was off for a couple of days—three days. I was away for three or four days between the time I found it and

the time I filled it out and when I came back I filled it out.

[320] GUSTAVE HOLGARSON. On *direct examination.* I live at Seabright. I have been in the fishing business for forty-eight years. I have been at Seabright for forty-eight years. I spend my time in the summertime in blue fishing, hook and line fishing and net fishing. In the spring of the year, mackerel fishing, during the drifting of mackerel—whatever I can get a chance to do. I go fishing out offshore and in shore, all over. I have been around almost all over the coast of Jersey and Long Island, too. I generally go about six or seven miles. That [321] is ordinarily, in the small boats. I have been out to the place where the garbage scows dump hundreds of times. I couldn't tell you how many times I have seen them dump their garbage because I think it is almost numberless. Many times I have to lift my anchor when I have been fishing to get clear of the garbage. The garbage is there in the water after the scows have dumped just the same as small islands. I couldn't exactly give you the measurements of them, but they are big enough, some of them, when they are first dumped, that you can almost walk on them. Then they spread after that. I was on the Oceanic during the trips that Mr. Smack made. I had the wheel. I have made every trip [322] with him, and I had the wheel from the time we started until we finished. I steered the boat. I was present when all of the photographs were taken that Mr. Smack testified to. When Mr. Johnson took the photographs I went right up alongside of them myself. I have seen the garbage on the scows before it is dumped. I have not been close enough to see what kind of things there were in it. I have been close enough to these masses after they were dumped and while they were still thick to see what was in them. I have seen oranges, banana peels, grapefruit, [323] even loaves of

bread, dead cats and dogs, tin cans, bottles of all descriptions. I have seen a good many kinds of boxes and crates in the garbage. I sail back and forth fishing each day. I have met the garbage along the way on either trip. I have followed garbage in to the shore. When the ebb tide slacks and the flood tide meets, you see, each and every tide has got trash with it, all kinds of it. They come together like that, you know. That forms kind of an eddy all along, you know, and there is more or less dirt in this garbage, don't you see, there is oil in the garbage, and when oil comes to the water [**324**] it makes a slick, and that is supposed to give what we call a wind row or tide streak. That is the way they form. And then they can go for miles, or you can see them right along for miles. I have seen these wind rows extending toward the shore. For how much of the distance between the places where they dump and the shore itself I couldn't exactly tell, because whenever the wind blows there is always some tide on top with it, but like a foot or two down below the action of the tide maybe is different, but the wind forces the water on top, and when there is wind coming in you will get that right on to the beach. When the wind comes from the northeast or the east, the garbage comes in. [**325**] I will tell you how it is. There might be an ebb tide, and when that wind blows from the east or northeast, you know, that ebb tide takes out on it, and consequently the wind forces it right up on the beach. That is the direction from which the wind and tide would bring any material from the location where the garbage is dumped. When the flood tide makes, it actually comes from southeast and goes right in northwest, and then you know if there is a force of wind and the tide with it, that will make it so much more, don't you see, and will come in so much faster; but if the wind is from the westward, it don't come in this way so much. Then it might be in towards the Long

Island shore. I have seen this stuff on the beach in Seabright. I cleaned a good many tons of it off. [326] That is a good many years ago. I saw some garbage this summer on the beach, but the last three years there ain't been so much garbage on the beach in Seabright. The garbage that is on the beach comes from the sea. It comes from the dump, I suppose.

DOCTOR JAMES A. FISHER. On *direct examination.* I live at [327] Asbury Park. I am an eye, ear, nose and throat specialist. I am familiar with the garbage conditions on the beach. I am led to believe they play a part in my professional work. I had a summary made of the diseases of the ear and the sinuses for the three months, June, July and August, to see if there had been any increase in these diseases. I only took the three letters, A, B and C under my index, because it would have been too much to go over the whole thing, but just to get an idea.

Furunculosis in 1928—this is just a few of the cases—we had four cases, A, B, C and D. In 1929, 12 cases, an increase of 300 per cent.

In external otitis, which is just a swelling and inflammation of the ear canal, we had one case in 1928, 11 cases in 1929. An increase of about 1,000 per cent. [328] Middle ear infections, including just the reddened drum, and cases where the ear drum had to be opened, 11 cases in 1928; 14 cases in 1929, an increase of approximately 20 per cent.

Sinus infection. Eight cases in 1928; 11 cases in 1929. In all of which cases the bathers themselves came in with the remark that they had gotten something from sea bathing. Judging from the conditions that I found, I could not form any opinion as to what they got from sea bathing except there was something, some particular reason why they should pick up the infection. They did pick up an infection. Pure sea water is quite

antiseptic. It has a high chlorine content. Any infection is quite contrary to the natural condition of sea water.

On *cross examination.* As to whether there has been a pronounced increase in those diseases in the last two or three years, over the records for the previous two or three years all along the [329] eastern seaboard. I don't believe there are any figures available to tell. I would not say that the opinion prevails in the medical profession as disclosed by the medical magazines, that sinus trouble has been steadily increasing for a period of over 18 months last past. In fact, in our section of the country here it is not. I don't think that is the general opinion in the profession. Perhaps there is some increase in sinus trouble, but that increase in sinus trouble does not come at that season of the year. That increase in sinus trouble comes in our spring months and late winter months, following our influenza [330] attacks. The increase that I have recorded here are acute cases, ony acute cases that come in with a painful sinus condition, not chronic. Those we have always. The total population out of which these figures I have compiled rate to is about 100,000 people. It comprises the North Jersey Coast. These figures that I have submitted here this morning are not on a basis of 100,000 population, the percentages are. The figures are just a small proportion of my records, the letters A, B, C and I think D, of my records in the office for the months of June, July and August of the two years, 1928 and 1929. The figures of the local board of health would not be a means of verifying any conditions that were general with regard to the health of these communities as sinus trouble is not a reportable disease. None of these are report- [331] able diseases. They are not communicable. Only one type of eye trouble is reported to the Board of Health. That type is gonorrhea oph-

thalmia. Epidemic conjunctivities is reported. There is none of that in these cases.

HARRY B. AYRES. On *direct examination.* [332] I am foreman in the carpenter line for the Ocean Grove Camp Meeting Association. I do work along the beach on the boardwalk, fishing piers, north end, south end, all along, the pavilions and all that kind of work. I have been in that work for eleven years. I am familiar with the garbage conditions on the beach. I see a lot of it. I have seen it come up at different times in windrows along the beach after a northeast or east storm, pretty thick. It consists of grapefruit, other fruit, bananas, cabbage, pineapples and all that kind of garbage, tin cans, bottles, wood, boxes, barrels, crates. It makes the beach look awful bad until it is cleaned up. [333] It has a lot of effect on bathing, because people won't go in when it is in the water or on the beach. I have seen it in the water. It appears right on the surface, sometimes, big patches of it, for a distance of 50 or 100 yards square. I have seen it in the undertow, lots of it. People won't go in when it is there. I don't recall any articles that bore addresses or names indicating where they came from. When the garbage reaches our beach sometimes it is pretty soft and bad. If it was allowed to lay there it would smell. I didn't notice any victuals or animal matter in it. There is grease and oil on the water when it lays in the undertow.

[334] W. D. FRANKLIN. On *direct examination.* I live in Ocean Grove. I have been Chief of Police there going on four years. I have been at Ocean Grove about 37 years. I am familiar with the beach conditions at Ocean Grove. [335] I have seen the beaches littered with garbage and trash and decayed matter, such as decayed vegetables, fruit, bottles and cans, boxes and wood. I have no supervision over the beach only as I police it.

For Plaintiff—W. D. Franklin, direct.

I think I have not had any difficulty on the beach in the way of injuries to people resulting from garbage or trash. I have not noticed any of that. I have noticed articles on the beach indicating where they came from. On August 22nd there was a gentleman brought a bottle into police headquarters, and it had a postal in it to be filled out. This postal was to be addressed to a party in New York City, and I took a record of it and I have the record with me. (Witness was shown a bottle.) That is the bottle. That is a copy of the paper that I wrapped around it at the time, [336] a copy of the record that I made. I have the original record in my pocket. (The witness produced a paper from his pocket.) There was a postal in the bottle. A gentleman brought it in. He is W. S. Loomis. I think you will find him in Newark. He was living in Ocean Grove at the time this bottle was picked up. He opened the bottle. [337] He had the postal and he had the bottle and he brought it in so that I could make a record of it. I made a record of it. (Discussion as to whether record was admissible. Allowed subject to later objection.)

There was a paper in the bottle. It had printed matter on it. I copied the printed matter myself. [338] I mailed the thing from which I copied the matter, back to the person at the address which the printed matter directed to be done. The original itself was mailed back to the source. The postal said "For the purpose of obtaining information concerning the currents in lower New York Bay, the finder is requested to fill out the blanks in this postal and drop it in the mail box as soon as possible. "Date found August 22, 1926. Hour found, 9 A. M. Place found, on beach at Ocean Grove." The name and address of the person who asked to have it returned was Arthur S. Tuttle, Chief Engineer, Board of Estimate and Apportionment, Municipal Building, New York City, Room 1347. The date was August 22, 1926. [339] The condition of this garbage on the beach I would call a

filthy mess at times. It is all kinds of decayed vegetables, such as carrots, onions, potatoes, fruits, such as orange peels, grapefruit, bananas and that sort of refuse. I have seen potatoes, I have seen cats, dead cats, I have seen dead dogs, I have seen onions, apples, bottles, cans, electric light globes, radio bulbs—I have seen so much that I can't mention them all. It just litters the beach up so that we have to employ men in order to clean the beach off. It is a nuisance in a way. I would say it interferes with the use of the beaches [340] till we get it cleaned up, till the men clean the beach up. Of course, people going in bathing, they usually bury it because they don't like to walk through that stuff. I have never been able to identify objects and indicate where they came from. I haven't examined any of them.

FRANK BROWN. On *direct examination.* (Witness was shown some pictures with the name Adams and Brown on them.) I took those on July 4, 1929. [341] There are pictures. Six pictures, all taken July 4, 1929, at Ocean Grove. (Discussion between counsel as to purpose of pictures.) (The photographs were marked "Plaintiff's Exhibit 45" to "Plaintiff's Exhibit 50" and admitted in evidence.) Exhibit 45 [342] was taken from the roof of the South End Pavilion, showing the crowds on the beach, looking, I will say, northeast. Number 46 was taken from the Ocean Grove Fishing Pier, showing the crowds in the water and on the beach, at the South End Pavilion looking almost directly south. Number 47 was taken from the roof of the South End Pavilion looking southwest across the water, showing the crowds on the beach and boardwalk of Ocean Grove. Number 48 also was taken from the roof of the South End Pavilion, looking directly down the boardwalk, showing the crowds on the boardwalk, crowds on the beach, and lines of automobiles at Ocean Grove, looking north, directly north. Exhibit 49 was taken from the beach itself, on the north end, showing

the North End Pavilion looking, I should say, northeast, showing crowds in the water and on the beach. Number 50 [**343**] was taken from the balcony of the North End Hotel, looking directly south, showing crowds on the beach and boardwalk at Ocean Grove.

(Witness was shown a picture marked "Contract number 1246, 1119, 29.) That represents the new convention hall and theatre on the beach at Asbury Park. This picture was taken from the roof of the Berkeley-Carteret Hotel, looking directly southeast. (The photograph was marked "Plaintiff's Exhibit 51" and admitted in evidence.) [**344**] (Witness shown another picture with that same indication on it.) That is a photograph of the new convention hall and theatre taken on the beach at Asbury Park, from the west side of Ocean avenue looking northeast. The date is on each one of the pictures. (The photograph was marked "Plaintiff's Exhibit 52" and admitted in evidence.) The picture that is marked Number N A 6-E was taken on July 4, 1929. It shows the crowds on the beach and boardwalk [**345**] at Asbury avenue, taken from the Third Avenue Pavilion looking south. Asbury avenue is in Asbury Park. (The photograph was marked "Plaintiff's Exhibit 53" and admitted in evidence.) Photograph marked "Adams and Brown, Number 675-E" was taken in the summer of 1928, somewhere along in June, July or August—in the bathing season. I can get the date from my file book. That was taken over in Bradley Beach [**346**] from the roof of the pavilion. (The photograph was marked "Plaintiff's Exhibit 54" and admitted in evidence.) Picture marked "No. 3698-A" was taken by me. It represents a bird's eye view of the City of Asbury Park taken from the roof of the new Electric Building, looking northeast. It was taken in the year 1928. What day or month I couldn't say unless I referred to my files. [**347**] (The photograph was marked "Plaintiff's Exhibit 55" and admitted in evidence.) (Witness shown another picture.) (The photo-

graph was marked "Plaintiff's Exhibit 56" and admitted in evidence.) Exhibit Number 56 represents the cars parked around the New Monterey and surrounding hotels. That picture was taken from one of the windows in this very building, on the north side, right here in this room. (Another picture offered.) (The photograph was marked "Plaintiff's Exhibit 57" and admitted in evidence.) Exhibit Number 57 was taken in the summer of 1928, [348] I should say, along in the month of June, July or August. The exact date can be ascertained, if necessary. It shows the crowds on the beach and boardwalk at Asbury Park, looking, I should say, northwesterly from the north end of the Third Avenue Pavilion.

On *cross examination.*

Q. Mr. Brown, I just want to ask one or two questions. I notice that many of these pictures bear the writing "Contract number 1246," and so forth. You were under contract to take these pictures?

A. No, sir; I presume that is the contract number of the Turner Construction people that are putting up the buildings.

I took these pictures for the Turner Construction Company by their direction. They employed me to take these [349] pictures. The Turner Construction Company is building the new convention hall at Asbury Park. They wanted these pictures as a record, I presume. The specifications and blue prints call for photographs to be taken on the first of every month. These pictures which do not relate to the new convention hall, for instance Plaintiff's Exhibit Number 50, showing a portion of the beach and boardwalk, I took for the Metropolitan Photo—I don't remember the name—Everett, Massachusetts. They are manufacturers of post cards. [350] They were taken to advertise the Asbury Park section. These pictures correctly represent the objects portrayed in the picture. This is not the size of plate that was used in the camera by

me; they are enlarged from a 5 by 7 film. I made the enlargements myself. [351] (Plaintiff's Exhibits Numbers 45, 46, 47, 48 and 50 are identified by the witness as being enlargements of original pictures. Exhibits 49, 51 and 52 are reproductions from contract prints, a negative picture thereon having been taken by the witness.) I took the original pictures myself from which these enlargements were made.

[352] WILLIAM WARREN BARBOUR. On *direct examination.* I live at Rumson, New Jersey. I am the manufacturer of Barbour's linen thread. I am the Mayor of Rumson. I own a boat and operate it in the Atlantic Ocean off the coast of Seabright and in that neighborhood in the summertime. I have been out where the garbage scows dump. [353] I have seen them dump their garbage out there. I have seen the scows moving in and out over a period of five years at least. I have seen the garbage after it was dumped from the scows in the ocean repeatedly.

Q. I will show you some pictures and ask you to pick out any of them that resemble conditions that you have seen yourself in the ocean, just those that you can identify (exhibiting photographs).

A. I have seen conditions that resemble these pictures, Mr. Minard.

Q. That is identification number 14 and identification number 24. Any others here?

A. I have seen conditions that resemble this (indicating).

Q. Number 21. Any others?

A. They are all neat enough alike to say that I have seen [354] conditions that resemble the situation as shown in those pictures.

Q. These that you have here are 16 and 17, and generally those are representative? Have you ever seen

any grease slicks, as the sailors call them, out there from the garbage?

A. I have.

Q. This light streak here has been described by the person who was present when the photograph was taken as a grease slick that followed the garbage scow from the dump.

A. I have seen that.

Q. Exhibit Number 12. Now, in what places in the ocean have you seen this? Does it move or travel around?

A. It goes ashore from several miles out.

I have never followed the garbage purposely, but I have seen it in different positions, and in that sense I have followed it from where it dumped to where it has gone ashore. I have seen it right on the shore. I have seen it in a great many different positions. I am a member of the Seabright Beach Club. [355] The Seabright Beach Club is a large bathing club at Seabright, where the residents of neighboring municipalities who are members of the club bathe during the summer months. The club is supported by dues and initiation fees, the same as a country club. There are several hundred members. I couldn't tell you closer than that. The Beach Club employs persons to free their beaches of garbages that comes ashore. I bathe at the Beach Club myself. The garbage has not only interfered with my bathing, but prevented it. It has happened markedly often. By that I mean sometimes several times a week. We have had this trouble in the [356] Beach Club from the garbage for at least ten years, I should say, within my knowledge. I couldn't say that the garbage interfered with the sailing, but it certainly interferes with the pleasure of boating, and the refuse in the way of sticks and other things, they interfere actually with the boating. These sticks are in with the garbage sometimes. This material that I see in the sea constitutes fruit

rinds, cabbage, other materials which are readily recognized as garbage, such as straw, vegetable matter, flotsam and jetsam, I guess it is called. It is the usual thing, you see. It is in various degrees of putrefaction, and sometimes worse than others in that respect. [357] Very often it has a very marked odor. I have not been able to identify any objects it in with marks or labels that would indicate where it came from. I have seen the garbage around the scows and I have seen it falling off the scows, and I have seen it between the scows and the shore, and I am positive that it is the same garbage.

On *cross examination.* The garbage that I have seen near the shore looks very much like that which I saw deposited out on the high seas. I have never made it my business to trace it from the high seas to any other locality, to trace it or move with it. I have never made it my business to do that. I have observed it very closely. I have observed it in a number of positions on a number of different occasions. I am basing my statement that the [358] garbage that came in on the shore is the same garbage that I have seen at sea, on this fact that I have observed it at different positions at different times on the sea. I am satisfied that it is. It is more than an opinion. From my observation I am sure it is. I have never definitely followed any particular lot of garbage from the barge to the shore.

HARRY W. BETZ. On *direct examination.* I live at Elizabeth, New Jersey. My business is that of clerk, Jersey Central Railroad, [359] in the department of auditor of passenger traffic. I supervise the records of passengers carried on the railroad to a certain extent. I have in my department the reports of conductors, ticket agents and so on. At your request I compiled a statement of

passengers carried to and from the following stations, from November, 1928, to October, 1929, inclusive, of the stations mentioned in the first column (indicating on paper). My company is the Jersey Central—the Central Railroad of New Jersey. They are all of the stations on the Jersey Central along the Atlantic Coast here in this neighborhood from Highland Beach down to Bay Head Junction. Of course, Highlands is also on the beach. It is not on there. For the stations that are mentioned there, this shows by months the number of regular passengers, that is tickets, individual tickets, and the number of commuters carried during each of those months, with the total below for each station. [360] It covers each of the months from November, 1928, to October, 1929, both inclusive, together with the total of the whole at the end. (Discussion between counsel.) [361] (The paper was marked "Plaintiff's Exhibit 58" and admitted in evidence.)

Q. I show you some time tables of the Central Railroad of New Jersey, and ask you whether they cover different sections of the line? (Presenting railroad time tables.)

A. Well, this one—this is mostly along the beach, the North Beach, with the exception of the Freehold Branch, which is also on the same time table.

It is the schedule now in effect for the winter season, effective September 29, 1929. [362] (The time table was markd "Plaintiff's Exhibit 59" and admitted in evidence.)

Mr. Minard. I would like to offer this first, in order to get a number on it, so I can refer to it and the record will distinguish it from the other. (A railroad time table.)

Mr. Crowe. No objection.

(The railroad time table was marked "Plaintiff's Exhibit 60" and admitted in evidence.) Exhibit Number 60 covers the same territory, but it has, in addition to

having the Central Railroad trains which this one has, which is Central Railroad only, this has both Central Railroad and Pennsylvania Railroad train schedules. Number 59 is published by the Central Railroad of New Jersey. This is published by [363] the Central Railroad of New Jersey and covers the territory that is now under question, from Long Branch down to Point Pleasant, and from Long Branch up to Highland Beach. Besides that, it covers Freehold territory. It covers the trains that we operate over the New York and Long Branch Railroad, too. Number 60 covers the New York and Long Branch Railroad, and shows both the Central Railroad and the Pennsylvania Railroad trains, and from the looks of it—I don't know who publishes it—oh, the New York and Long Branch Railroad issues this one. The New York and Long Branch Railroad is a corporation, to the best of my knowledge and belief the entire stock of which is owned by the Central Railroad of New Jersey. The New York and Long Branch does not operate any trains at all. They have no rolling stock whatever. The Pennsylvania Railroad operates it under agreement, trackage right agreements. [364] Number 60 includes all of the stations and all of the trains of the Central Railroad Company shown by Exhibit 59, plus all of the Pennsylvania Railroad trains within the same territory on the New York and Long Branch. The Official Guide for June, 1929, contains the summer schedule of the Central Railroad, but I think that July would contain a few additional trains. June practically covers all the summer schedule, because at that time our Sandy Hook boats are in full operation.

Q. Now, can you pick out the time table there that shows the corresponding service of Exhibit Number 60, with both the Pennsylvania and the Central trains on the New York and Long Branch Railroad? (Producing a time table.) Or isn't there any in there?

A. Yes, there is. Here it is right here (indicating).

For Plaintiff—Warren S. Painter, direct.

Q. And that corresponds with Exhibit 60, does it? [365] A. Yes, sir. This is the northbound—the one I showed you was the northbound, and here is the southbound.

Mr. Minard. I don't think I need to offer this book in evidence.

Mr. Crowe. I don't think there is any need of offering any of this; it is so remotely relevant.

By Mr. Minard:

Q. How many of these sheets contain that schedule?

A. This is the week-day on one side, and this is the Sunday (indicating).

Q. Is this a part of the Sunday schedule up here, too (indicating)?

A. That is part of it. This is all New York and Long Branch.

Mr. Minard. Now then we will put these in their order, 344, 345, 346, 347, 349. I offer this New York & Long Branch summer schedule in evidence, consisting of pages 344, 345, 346, 347, 348 and 349 of the Official Railroad Guide of June, 1929. I ask that that be marked. [366] (Discussion between counsel.) (The time tables were marked "Plaintiff's Exhibit 61," and admitted in evidence.)

[367] WARREN S. PAINTER. On *direct examination.* I live at Beverly, New Jersey. I am chief accountant to the Auditor of Passenger Traffic of the Pennsylvania Railroad. At your request I had prepared a schedule entitled "Number of passengers carried to and from New Jersey seashore resorts on line Long Branch to Beach Haven, divided between commutation and all other classes of travel, for months of November, 1928, and July, 1929." It was made under my direct supervision and instruction. [368] The different columns show the stations. The second column is commutation passengers for July. The

third column is all other passengers other than commutation for July. And the last two columns are commutation for November and other than commutation for November. The two months of July and November, 1929, were selected to show a comparison between the summer and winter travel. That shows it. (The paper was marked "Plaintiff's Exhibit 62," and admitted in evidence.)

Q. We have offered here, Mr. Painter, Exhibit Number 61, which shows the trains on the New York and Long Branch Railroad, including the Pennsylvania and the New Jersey Central trains. Can you tell me whether there are sections of your line that are not included in the Long Branch Railroad?

A. Oh yes.

Q. Can you identify any of these time tables here as covering lines not included in the New York and Long Branch?

A. These all cover New York and Long Branch points.

Q. I know, but do they not cover other points? For [369] instance, Philadelphia to Long Branch?

A. It covers the stations between Philadelphia and Long Branch.

The New York and Long Branch ends at Point Pleasant.

Q. Does this show trains between Long Branch and Point Pleasant that are not on Exhibit 61? Maybe I ought to say, are there any stations on this other time table—

A. This is to New York.

Q. This is the other end of the line?

A. This is coming from Philadelphia.

Q. What schedule is this? What season?

A. That is the present season. These schedules are in effect at the present time.

Mr. Minard. I offer it in evidence.

[370] (Discussion. Objection. Overruled. Exception.) (The time table was marked "Plaintiff's Exhibit 63," and admitted in evidence.)

For Plaintiff—Morgan F. Larson, direct.

Q. I show you a time table now marked "Philadelphia and Long Branch via Trenton." Is that another line of railroad that comes into the seashore here?

A. We have two lines from Philadelphia, one by Trenton and the other from Camden out by Toms River. This covers a line other than the other two that have already been put in. This is via Camden and this is by Broad Street Station, Trenton. [371] That is a different line from that one. That is the schedule in effect at the present time. (The time table was marked "Plaintiff's Exhibit 64" and admitted in evidence.) This represents the summer schedule of 1929.

Mr. Minard. I offer in evidence the summer schedule over the same line for 1929, consisting of pages 393, 394, 395, of the Official Railway Guide of June, 1929. You may cross examine.

Mr. Crowe. The same objection and exception as to all of these.

(The time table was marked "Plaintiff's Exhibit 65" and admitted in evidence.)

On *cross examination.* We have special one-day excursion tickets on sale in the summer period. [372] I am not able to express an opinion now, based upon any information that may come from the records of my company, as to the extent of that traffic. I could get the information. I would say it would represent part of the increase. Of course, it would not represent all of the increase. I cannot say whether it would be a major part of the increase, on less than half of that increase. I can't say how much.

Mr. Crowe. Thank you very much.

MORGAN F. LARSON. On *direct examination.* I am the Governor of New Jersey. I have been in office for [373] one year. I live at Perth Amboy. Before I was Governor, I was in the State Senate for eight years.

For Plaintiff—Morgan F. Larson, direct.

During my legislative experience, this matter of beach pollution has been the subject of official action by the Legislature. It has been one of the features of the platform of the parties in this State. It has been in both platforms for many years. The Republican platform of 1922 had a plank; the Democratic state platform of 1923 had a plank on pullution, also the Republican state platform of 1923. In 1924 the Republican state platform had a plank, and in 1924 Governor Silzer's annual message dealt with beach pollution. The Democratic state platform of 1925 had a plank, and the Republican state platform of 1925; the Democratic state [**374**] platform in 1926 and the Republican state platform in 1926. Governor Silzer's annual message in 1926 called attention to beach pollution. The Republican state platform in 1927 and Governor Moore's first annual message in 1927 called attention to beach pollution. The Republican state platform in 1928 again called attention to beach pollution, also the Republican state platform in 1929 and the Democratic state platform in 1929. Then I called attention to it again in my inaugural address of last year. I remember Joint Resolution Number 3, Laws of 1927. That was introduced by Attorney-General Stevens when he was a senator. (Discussion of counsel.) [**377**] (The paper was marked "Plaintiff's Exhibit 66," and admitted in evidence.) Joint Resolution Number 6, Laws of 1928, was a part of the legislation adopted while I was a member of the Senate. It was introduced by Mr. Steener, who is now Senator from this County and at that time was in the Assembly. [**378**] (The paper was marked "Plaintiff's Exhibit 67" and admitted in evidence.) After my inauguration I sent for the Attorney General and instructed him to give me advice on how we could go ahead with any necessary action to compel the City of New York or anyone else from polluting our beaches along the Atlantic Coast. He then prepared a resolution. Joint Resolution Number 16, Laws of 1929, is the resolution

that the Attorney General prepared pursuant to my instructions. It was introduced in the Senate by the majority leader, Senator Pearson. I approved it as Governor after it was passed. (The paper was marked "Plaintiff's Exhibit 68," and admitted in evidence.) The present suit is the result of that resolution, [379] those instructions therein contained by the Legislature.

I have been familiar with the beach pollution for the last six or seven years. Unless it is stopped it is going to ruin our beaches as playgrounds. I have had many people tell me that if it was not stopped they were going to give up their homes along the seashore. My residence at Perth Amboy from the most northerly beach, which we will say would be Morgan, would be about three or four miles. I have been personally familiar with these beaches ever since I can remember, which would be back 40 years. I have been familiar with garbage conditions all that time. [380] In order to show the relation of these beaches from a recreational point of view to the economic welfare of the State, I have some figures here showing the assessed valuation of properties, assessed valuation of the boroughs and townships along our beaches. These figures were obtained from the New Jersey State Board of Taxation, one of the departments of our government. They are the official figures for 1929. They cover the municipalities from Highlands Borough to Long Beach Township. (The paper was marked "Plaintiff's Exhibit 69," and admitted in evidence.) All the time that I was in the Senate, the State was [381] continually asked for assistance, for appropriations to assist the municipalities along the beach front to build jetties and other works to protect the beach, and the State of New Jersey, realizing that this beach front was a valuable asset, has contributed many thousands of dollars, possibly up in the millions, in aiding these municipalities in retaining these beaches. I have a department under my jurisdiction that deals with that

matter. It is the Department of Commerce and Navigation. I have obtained from that department the official figures for a period of time on that subject. The statement shows amounts spent by state for coast protection between Highlands and Beach Haven from the year 1920 to 1928. It gives the year in one column, the location of the work, the amount of the appropriation, the total cost and the amount that the state contributed to that. The difference between the two last columns shows the amount that the [382] municipalities themselves contributed toward that cause. (The statement was marked "Plaintiff's Exhibit 70," and admitted in evidence.)

We have along this seacoast licensed fish pounds. That is a substantial industry. We have a department that has supervision of that. It is Fish and Game Department. [383] I have here the official figures of that department, showing the value of the pounds, the proceeds derived from the sale of products, number of pounds of fish caught, licenses issued, and the number of pounds operated and number of men employed. (The statement referred to was marked "Plaintiff's Exhibit 71," and admitted in evidence.) We consider the beaches one of the greatest assets of the State of New Jersey, and the extent of that [384] benefit would cover the whole state. The people from all parts of the state resort to these seashore places for recreation. I have met people here from many of the countries in Europe, and I know personally that right here in this hotel there are men—I don't know just how many, but I know there are several men here from Chicago that live here during the summer.

Q. Governor, I would like to put into the record that part of your inaugural address of this year which relates to this subject. I will say not for the purpose of proving any facts, but merely to indicate the importance with which the matter was considered by the Governor.
(The paper referred to was marked "Plaintiff's Exhibit [385] 72," and admitted in evidence.)

For Plaintiff—Walter P. Fahy, direct.

WALTER P. FAHY. [386] On *direct examination.* My winter residence is in Philadelphia. I reside at Spring Lake in the summertime. I am an attorney at law. I reside at Spring Lake from the beginning of June to the end of September. I live within a block and a half of the beach. I suppose every day I am down I walk along the boardwalk. I am familiar with the garbage problem on the beaches. During the summertime the beaches are terribly littered up with all sorts of garbage, lemon peels, grapefruit peels, orange peels, water melon rinds, cantaloupe rinds, honeydew rinds, all sorts of garbage of that kind, apples that are rotted, banana peels, carrots, the stems from the banana plant, onions, turnips, cabbages, lots of [387] bottles, crates, some old mattresses, a few old bed springs, dead dogs, dead cats, and all sorts of refuse. At times the beach is almost impossible. You can't walk along there with any degree of comfort without getting into a whole lot of dirty filth. My children have to keep away from the beach at times on account of the filthy conditions. Last summer the Improvement Association of which I am president, in addition to the money spent by the borough authorities, spent about $700 to keep men on the beach to try to keep the beach clear of refuse. I am president of the Improvement Association. The duty of that Improvement Association is to do everything it can to promote the welfare of Spring Lake. Last summer they spent about $700 in keeping a couple of men patrolling the beach all the time, endeavoring to keep it clear. That was in addition to the man kept there by the borough authorities. That is our contribution to the municipality's [388] efforts. This stuff on the beach is just what you might say ordinary garbage thrown up there, and if allowed to remain there for any length of time it will rot, and then give off a very unpleasant odor, very offensive odor. I have never noticed any articles among the garbage that indicated the source of it. The only thing is that when the wind is from the north, the

beach is very much worse than it is at any other time. I have never looked for identification marks on any of the things. I have seen the garbage in the water, both on the surface or in the undertow. And at times the water there is so filthy that it is not safe to bathe in it. You can't go in. After we have had a few days of wind from the north the current comes down the beach, and then it is very often almost impossible to bathe. [389] Everybody is complaining about it, and they say that if the beach is not improved they won't come there; they come there for the beach, and if the beach is in an unsanitary condition they won't remain. They threaten to leave. The municipality and our association in aid of the municipality have people there constantly on the beach trying to keep it clean. There is absolutely nothing that they could do more than they are doing to make the beach clean. It could not be done. We have half a dozen men, and at times when there has been a storm, additional men to just rake up the garbage and refuse. There are lots of tin cans and bottles there, and really it is unsafe to walk on it, after a storm particularly. This material that is on the beach all comes from the sea.

WILLIAM CATLEY. [390] On *direct examination.* I live in Ocean Grove. I am Captain of Police. I have been at Ocean Grove about 16 years. I am familiar with the beach conditions there. For the last 16 years I have known it. I have seen garbage laying on the beach there in wind rows, as the water brings it up further and further, just laying there in wind rows. I have also seen it laying in the undertow. Out beyond that you will see a scum, a white scum laying on top of the water. It consists of banana stalks, orange peels, grapefruit, old carot tops, dogs, cats, all kind of fowl. [391] It has that much effect on the beach that I have seen the bathers sit on the beach and refuse to go into the water with it laying there. I have also heard the bathers in the bath

houses complain about the odor from it. I have seen stubs of check books and backs of check books. Of course just what bank it was I couldn't tell you now. They were located in New York City. I have seen a lot of old bill-heads and such as that. They would be from New York. I have seen lots of empty bottles and electric light globes. I have also seen the bathers cut their feet down there with glass laying on the beach, and we have had to take them in and give them first aid in the hospital.

On *cross examination.*

Q. Have you ever observed the conditions at the beach, Captain?

[392] A. You mean went out?

Q. Yes.

A. No, sir; I never went out.

ARTHUR L. BARKLEW. On *direct examination.* I live in Ocean Grove. I am a police officer. I have been a police officer there for five years. I have been around Ocean Grove for ten years. I am familiar with the beaches. I am familiar with the garbage on the beaches. [393] At times it lays there in windrows, as we call it, not only in one spot but all the way along the beach, not only in Ocean Grove but in Asbury Park and clean on down to Shark River I have noticed it. In some places there will be more than others, but streaks right along all the way down. I have seen that pretty nearly every time we have a northeast wind. It just ruins the bathing. It isn't fit to go down on the beaches. I have seen the time the bathers wouldn't go in the water at all. I have seen them walk on down the beach and wouldn't go near the water. I have examined the articles to see where they came from. I have found several checks along the beach, indicating that they came from New York. They were cancelled checks. But I don't know just what bank. I mean bank

checks. I have seen billheads and tags from boxes. [394] That's all I remember. The addresses on these were all from New York City. Names I don't remember.

On *cross examination.* These objects that I saw, I saw them only on the beach. I found them amongst the rubbish and garbage on the beach.

On *re-direct examination.* I have seen plenty of that stuff come in on the beach. [395] It absolutely comes from the ocean. These picnickers never leave much on the beach.

GEORGE B. GOODRICH. On *direct examination.* I live in Borough of Avon. I am the Mayor of the borough. I have served one term under the council and going on the third year under the commission form of government. Outside of that I have been in an official position in Avon for 12 years. I am familiar with the beaches down there. [396] We have trouble with garbage. It has been a long period that we have been troubled with a terrible lot of garbage on our ocean front, and we have had so many complaints that it is a serious question, and it has been quite a detriment to us on our two bathing beaches. We had pictures taken down there to show conditions at particular times. I recognize those as pictures of conditions on our beach. (Exhibiting photographs.) I have seen those pictures before. I didn't take the pictures myself. I have seen the conditions on the beach represented in these pictures. I have seen the conditions shown in these pictures the very day they were taken. [397] I was there. They were taken the first part of February, 1929. There is a date on the back. They were all taken the same day. I was down there in the morning. I was not present when they were taken. I was there shortly before the pictures were taken. These pictures correctly represent the objects therein shown. [398] (The three photo-

graphs were marked "Plaintiff's Exhibits 73, 74 and 75," respectively, and admitted in evidence.) The conditions that those pictures show occur quite frequently down in our community. We generally have those conditions, depending on the way the wind is. Especially if the wind is from the northeast or direct east, our beaches are just covered with garbage. The northerly end of Avon is about two miles from here. We are up the coast a short distance south. To take care of this garbage situation, the beach commissioner has to employ men and our own trucks and carry the garbage off the beach and load it on to trucks and take it away, because we can't drive on the beach with a truck. The sand is too soft. It is not hard sand. [399] In my opinion this garbage does us a great injustice, for it spoils our principal attraction. Our principal attraction is the beach front, as well as the river that borders on our south border, Shark River, which has a permanent inlet. The garbage spoils our beach because the people will not patronize the bathing grounds or go on the beach, because serious injury has occurred lots of times with bottles that have been broken on the beach, and there have been quite a few cases of people cutting their feet on broken bottles. I have examined this garbage to find out whether there are marks to indicate where it comes from. [400] After that storm in February, 1929, I found a lot of theatre tickets stamped "New York City," and bills of fare of various hotels and restaurants; boxes and crates with New York City addresses on them, and a lot of bottles. Lots of these bottles have come from various drugs stores in New York City, the labels being fastened to them. I know one bottle in particular that I picked up—I am sorry I didn't save it—it was a blue bottle, and on the bottle was the name of a druggist in the Bronx, New York City, and it was labeled "poison," and there was some contents in it and I drawed the cork. I didn't like the odor of it, so I

dumped it on the beach and throwed the bottle down. Now I consider that would be a very serious situation, especially if a child happened to pick that bottle up. I have not been able to identify any other articles any further than what I have already stated.

JOHN F. MURRAY. [401] On *direct examination.* My home, my permanent home, is in Newark, N. J. My summer home is at Belmar. My official position in Newark is Director of Public Works. I am a member of the city government of the City of Newark, a city commissioner. My summer home is at 101 First avenue, about 300 feet from the ocean. I have lived there for ten years. I am familiar with the beach and the conditions on the beach at Belmar. I frequent the beach. I go bathing in the ocean. [402] On numerous occasions during my residence in Belmar I have noticed a rather filthy condition of the beach. At the recession of the tide, after the tide would come in, there would be, I would say, from a yard to two yards of a strip along the beach covered with the refuse of fruit, some fat, milk bottles, cans, labels of various types, and on many occasions it has been so filthy that when I took my children down there I took them back again. I wouldn't let them go in. The water was not fit to go in. There would be a great deal of this filthy stuff in the water. How frequently it occurs I wouldn't say that with any degree of definiteness, except that it was very frequently the case with the wind blowing from the direction of Sandy Hook. If the wind was from the south we wouldn't get it, but if the wind came from Sandy Hook it would very frequently bring this condition on the beach, and it would be pronounced in many cases after the weather had been foggy the day before. If it had been foggy weather, you would find that rather emphasized. I have seen the garbage floating in before it arrives at the shore. I have been out on fishing trips at Belmar

many a time and watched it float in. [403] It was in large spots. They were not entirely together. I suppose that was due to the approach of the breaker line. But there would be a stretch of it, I would say, 100 feet across and probably twice that distance out where it would be coming in and receding, and it would just drop a portion on the beach, and for a considerable distance out you could see that stuff coming ashore.

I have observed these conditions all the way from Monmouth Beach to Spring Lake, because I noticed the condition on one particular day and I wondered how much it extended, whether other people had it, and I just drove down as far as the gate of Spring Lake, and I noticed their beach was the same, and it came back as far as my own beach, and I said, "I guess it must be a general condition all along." I should say that is about 12 or 15 miles in distance. When the garbage is deposited on the beach, if it isn't promptly cleaned and you have a warm sunny day, you very frequently get the odor of it for a considerable distance from the beach, and it is a very offensive odor when you get [404] down to the beach, because this fat and grease and so forth that comes in gets the effect of the sun in a very short time, and the odor is very unpleasant.

Belmar couldn't exist except for its attractive beach front, and if you damage the beach front you damage the main attraction of the Borough of Belmar, and it is detrimental to every taxpayer in the town, I should say. I have seen them bury a dead cat and a dog more than once, and have seen them bury other matter that they raked together and was very offensive. The only thing to do is for the crowd on the beach to borrow a shovel and dig a hole and bury it. That has been done. They dig a whole two or three feet deep so as to make sure it won't be uncovered by the ebb and flow of the tide. That is common practice. Every time it occurs somebody has to do it.

For Plaintiff—John F. Murray, cross.

I have been out to sea in boats. [405] I have seen the garbage out at sea. I suppose about five miles away from shore; anywhere from three to five or six miles. I don't know where they dump. I have never seen the scows dump out there. I have seen this garbage, as I said before, five or six miles out, if you go out that far—some men may take you out further than that, but usually they don't take you out further than that, and there have been times when we get out there and have been unable to fish where we expected to fish, because the sea was covered with all this filth, and the man in charge of the boat, who knew more about fishing than we did, would say, "This is no place to fish," and we had to go out further. I couldn't give you a fair estimate of the area covered, but certainly a larger area than the ordinary city block in a single patch. (Witness was shown some pictures and asked whether he [406] could identify any conditions similar to what he had seen out there.) I haven't seen it as bad as depicted in Plaintiff's Exhibit Number 13. I never was there at dumping time. [407] On *cross examination.* I have resided at Belmar for ten years. This is my eleventh year. Whether that community has progressed very rapidly in that period of time would depend on what you call "rapidly" for a seashore community. Belmar when I first came to it didn't have the improvements in the municipal form which they have now. It had not developed from the governmental standpoint to the point at which it now stands. But its development could have been a great deal more rapid. But I don't know that my answer would be anything in point to your question. It has developed moderately, kept pace with the times down there. I wouldn't say that particularly within the last three years it has made greater strides than in any other like period of time. I would say that the development has been gradual, then, in some years. Some years it has been what I would [408] call a normal

development and some years it has not. I know West Belmar. The distance is two or three miles from the beach. That section has likewise progressed with the territory that surrounds it, if you call the construction of little one-story cabins progress. More people are there now than were there five years ago. And more houses of various type have been erected within the last five years.

AUGUST G. BIRKENMEIER. [409] On *direct examination.* I live at Maplewood, New Jersey, and Bradley Beach. I have been in the assembly of the State of New Jersey. I was a member of the legislature for three years. I spend my summers at Bradley Beach. I have been doing that for twenty-two years. Maplewood is just west of, or rather in the suburbs of Newark, in Essex County, New Jersey. I spend usually from the 15th of May until between the 15th and the last of October at Bradley Beach. [410] I am a frequenter of bathing beaches at Bradley Beach; very much so.

I am familiar with the garbage condition there. From time to time we have had a real bad situation there, especially this past year. I don't know as I have ever seen it so bad as I did the first part of August. I make it a practice to go down bathing each night, regardless of the temperature, if it is permissible. I mean by that when there isn't garbage floating in the water. On this particular occasion I went down—my boys usually wait for me—and they said, "You can't go in." However, I slipped my suit on. I thought perhaps it wouldn't be so bad, but it was just terrible. The beach was littered with all sorts of crating and boxing, bottles, cans, rinds of grapefruit and tomatoes, every imaginable thing that you can think of that apparently happened to be like you would see on a dump. This time it was all on the shore. I had gotten [411] there about 6 o'clock in the evening and it had all

washed up during the day, and they said no one was able to go in during the day. It had an awful foul odor. I live 200 feet from the ocean front, and as you got within a hundred feet of it you could smell it. That material was not left there by basket picnickers; good gracious. We do not have any basket picnic parties down on Bradley Beach. They have an ordinance against it. I have seen the slicks in the water from the garbage. It is rather like a foam, if you ask me. It is a scum like. I suppose it is greasy. I don't go in when it is in that condition, so I don't know whether it is greasy or not. But it is a foam, a scum. I have seen the garbage floating at sea. I go out fishing. We went out tuna fishing, and I suppose we were out [412] four or five miles. We could just barely see part of the shore, and we ran into one or two big spots of this rubbish, and our captain turned around and pulled all the way around for miles away from it. In other words, we went way up to the northern end to get away from it. This garbage covered in area, I should imagine, a square block of probably 200 feet. It seemed to float together pretty much. It hadn't been broken up yet. I have never been out and seen the scows dump. I can't say I have seen the scows passing up and down. I didn't recognize them as scows. I have never identified the source of any of the objects in the garbage so that I made any mental note of them. I noticed, as probably everybody does, not only on the crating but other things, the regular directions that was probably on it originally, but I didn't pay any attention to where it was [413] from. I am not in a position to testify to that.

FERDINAND KIENLI. On *direct examination.* I live in Avon. I haven't any business at present. I am Commissioner of Avon. I am a member of the city

government. It is a commission form of government. I have been down there at Avon about nine years.

[414] I am familiar with the beaches and the beach conditions there. I have charge of the beaches. I have had charge of them since May 17, 1927. In that time, I have had considerable experience with garbage. This year was the worst I have seen yet in my experience of commissioner of the Borough of Avon. During February 6th and 7th I saw the worst dose of garbage I have ever seen. It covered the full length of our beach. Our beach is 2,900 feet long. I saw tons of garbage, that is, orange peels, grapefruit skins, onions, dead dogs, chickens, restaurant menus, theatre tickets, bed springs, mattresses, pails, various other things. On these theatre tickets and menu cards [415] there was the name New York. I have charge of cleaning the beach. We have to cart the stuff all off. You see, we can't get in with a truck, and every bit of it has got to be carted, the cans and everything, you know, on to the highway and then carted off. The condition of this garbage is so bad that we couldn't leave it on our beaches, even bury it, because the children play there and dig around, and we have to cart it off. I have no record of the cost of cleaning our beaches for the year. I don't keep those records. The street superintendent takes records of the days that the men work there. He is Mr. Dodd, Superintendent Dodd. We have a man there continually, that is, from June until after Labor Day, that does nothing else but take care [416] of the beach, and our regular force goes down there seven days a week during the season. Every morning the beaches are cleaned up. We get more or less of this garbage every day. When the prevailing winds are northeast and east. On the days that those winds prevail, the garbage comes in, and people won't bathe—that is, some of them won't bathe—quite a few. We have conditions down there so that they can't go on the beach at all. We have had trouble with this stuff this year, off and on. I couldn't say just

how many times, but most generally when the prevailing winds are from the north, northeast and east, we get garbage.

S. THOMAS PENNA. [417] On *direct examination.* I live in Avon. I am a hotel manager, and also one of the Commissioners in Avon. I manage the Avon Inn. It accommodates about 300, 325 people. We would average, from the 1st of July until Labor Day, I should say 250. A large percentage come from New York City. I should say 50 per cent. We have trouble with garbage on the beach down there. [418] The trouble is that it makes it very disagreeable for my guests who wish to bathe, and they complain about it and wonder why we don't do something about it.

I am the Commissioner of Finance. The winter resident population I should say is about 1,500. The summer population is I think around 5,000. It might vary. It is very difficult to know that. The investment in summer homes and boarding houses in Avon, we figure up approximately about $500,000. We figure, with the homes and business properties, about $3,000,000. We have spent for piers and jetties and boardwalks, about $150,000. [419] We have spent for bathing pavilions or clubs about $40,000. We have a pool down there. The pool is owned by the city. We have the pool to make it possible for people to use the pool and go in bathing from the pool. You see, we have about 300 bath houses with the pool, and the people who come there for the day, it is nice for them to take a bath house in order to go in bathing. Sometimes when the garbage is very bad they will use the pool for bathing. The pool serves for bathing purposes when the garbage prevents bathing in the sea. When the garbage is there I go down there and see it. Of course, I live on the beach front. I do not remember the condition in February, that the Mayor testified to. I was in Cuba at that time.

For Plaintiff—S. Thomas Penna, direct.

This garbage when I see it on the beach consists of [420] all sorts of vegetable matter, such as onions, potatoes, banana stalks, pineapples, grapefruit rinds, orange rinds, and then there will be furniture, broken chairs, carpet sweepers, wooden carpet sweepers, dolls, children's plaything, mattresses, springs, wood, all sorts of miscellaneous articles of that sort. I have examined these things to see whether I could identify their source. Last year there was part of a mattress came in with the tide, and I examined that and there was a slip sewn on the ridge, and it showed that it came from some 125th street furniture house. There was a place for the date, but that we couldn't make out. The place was New York City. I have examined bottles and tins. There was a lot of tins came in, and you could read New York City on that—came from some drug house. I have seen stacks of order blanks. That also I remember was from a drug house, and it was a carbon copy from New York City. [421] They were order slips. And they had evidently been bundled away —duplicate order slips. I think that's all, excepting crates. I have seen crates with names of Washington Market places in New York City; a produce market. I have seen dead dogs and cats. They were putrifying. I have seen them sometimes when the skin would be torn off and there would only be part of the dog, and cats with the head mashed in. And lots of eggs came in. I never examined the eggs, but I know there were a lot of eggs one time came in.

Other conditions were pieces of ham and meat, fowl—just a putrid mass of decaying flesh. I have seen the stuff in the water. [422] It seems to—there will be sort of like islands of it. It seems to stick together, and then there would be a break, and then there would be another formation of the same stuff, and then it would come up with the tide, and as the tide would ebb and flow it would leave a ring along the beach

of this refuse that I am speaking of. You would see it on the surface right after a storm, and then sometimes the next day you would go down and you wouldn't see so very much on the surface, but every time the waves would break you would see it come up then. Ssometimes the waves would look golden from the rinds of orange peels and so forth that they contained. This putrid stuff would get in the undertow if it wasn't removed, because sometimes the waves will carry it back and forth and back and forth. [423] After we have taken the material off, I wouldn't say there is any condition of the beach which results from this greasy material excepting there seems to be an oil greasy settlement there. That is all. That is not always easily removed. I have seen it stay there sometimes for several days. Of course, that grease creates an odor.

On *cross examination.* Our pool down there, the municipal pool, the borough pool is inclosed. People use that pool on rainy days, but of course there is not much bathing on rainy days. When the sea is very rough there is very often a cold north- [424] east wind blowing, and people are not inclined to go in bathing then. They use the pool when the conditions of weather and sea make it perilous, or diminish the enjoyment of bathing. Children often use the pool to learn to swim. They use it all the time.

RAYMOND DODD. On *direct examination.* I live in Avon. I am superintendent of streets. I have lived in Avon for 18 years. I have been superintendent of streets about nine years. I clean up the beaches. [425] I clean up garbage and trash of other kinds—wood. This garbage on the beach consists of all kinds of vegetables and dead dogs and cats occasionally, and chickens, chicken heads, bottles, cans, boxes, grapefruit, oranges—that is, the skins—well, most everything.

For Plaintiff—Raymond Dodd, direct.

I am familiar with the condition on the 7th of February. That was the heaviest that I have ever seen. We have garbage conditions there frequently. Whenever the current is running from the north and a little abreast, we always seem to get garbage and trash. [426] As to how much we take away at a time, I can only tell you at this one particular time, in February. That is the only time that I have a record of just the number of loads. The length of our beach is a little over 2,900 feet. In February there was 63 Ford truckloads of this garbage and trash, bottles and cans. It came out of the ocean. I had to cart it about a mile to the dump, after carting it off the beach. With an extra four-inch piece on the side, it would make a truckload about what you would call a yard and a quarter. There were 63 of those truckloads from the one cleaning. The commissioners have done something about this matter of getting rid of this garbage, or getting relief from it. I haven't myself. [427] Once in a while I would pick up a piece of paper, bundle of slips and see they would be New York slips, but to tell you just what it was, I couldn't tell you that. I have picked up like these order slips, theatre tickets and those hotel menus. I don't know the names of where they were. They were all marked New York when we looked at them. I never go out in the ocean only to bathe; that is as far as I go. I have seen the garbage floating in the sea; patches of a couple of hundred feet. It was from the edge of the water, about 200 feet. Just over the outer bar. After we clean up the garbage sometimes there is that sticky grease that comes in with it, that you can't get out of the sand. You rake [428] it in and rake over it, and it goes in. We rake the sand up to cover it over. If the tide don't get up over it and the sun comes out the next day, there is a little odor from it. If you were sitting down within five foot of it you would know it was there.

For Plaintiff—M. Hall, direct.

On cross examination. Our own garbage disposition is contracted. The contractor carts that miles back. It isn't burned, as I know of. That is under a contract for a period of five years. That has been the only method of garbage disposition in our community.

[429] M. HALL. On *direct examination.* I live in Seabright. I am in the fishing business. I have been in that business about ten years. I was one of the party that Mr. Smack and Mr. Holgarson, that has been testified to, went out and got the pictures. I was out about 32 times altogether. That was [430] from April, sometime in April, to about the 17th of July. I am cod fishing at the present time. I was out day before yesterday cod fishing. And I fish now whenever the weather is fit to go out. I go out sometimes about 8 or 9 miles. I have been out to where the garbage is dumped lots of times. We saw them dumping about a dozen times. I have seen the condition of the water after they dump.

I was present when Mr. Johnson took all these pictures that are here. I recognize all of these pictures: Exhibits 29, 18, 13, 20, 21. [431] The pictures of the Lightship and the scows and so on that Mr. Johnson took during his trips on July 2nd and 17th, I was present when they were taken.

I have been familiar with the garbage on the sea for some time. For the last 20 years, I guess, I have seen more or less garbage. You are apt to come in contact with it anywhere out to sea, drift in among it. To show you how the current works, I have been working at nighttime out there and drifted 7 or 8 miles with the nets drifting with the tide. You don't stay stationary in the water; you go one way or the other, go with the current, and I have seen the tide go directly in to the shore several times. It is only a question of time when the beach will be reached. You have either got to go offshore or inshore. Most of the time when the condition is right it

will come into the beaches. I see them dump it, and then it comes in a compact mass in the water, and then after a while it will dissolve and spread out, depending on the roughness of the sea. [432] I have seen it for miles. I have followed it along with my boat. I have sailed through it lots of times, yes. Sometimes, of course, at nighttime it is very dangerous, because you are apt to run into logs and things of that kind, and get the boat damaged. The garbage consists of out there when it is dumped, as I recall it to mind, all kinds of vegetables, and oranges and lemons and things of that kind. There are wood containers and barrels and bottles, electric light bulbs and things like that. I have followed it sometimes all the way from the dump into between the Lightships, between the two Lightships. With a heavy tide behind them, you can follow that trail, the wake of the scows where they are dumping all the time. [433] I mean the conditions described in those scow pictures with the material sticking fast to parts of the scow. There is always some left after they dump the scow. Some of it sticks to the scow, and as they come in they shovel off that stuff.

I saw this scow that day shown in picture Number 3, and picture Number 10. It is impossible to have them dump it all in one spot, because always some is left in the scow, and as they go in sometimes there is some left on the ridge pole, like here, and that would be dumped afterwards. They do not stop to dump that garbage. They keep right on. [434] They make a great circle, each scow coming around, and as the tug blows the whistle the scow dumps, and it will take about 20 minutes for one scow to dump, and each one will leave a big mass in the water which will float on top of the water about two feet above the water, and after a while that will spread out. I have run a boat into it, and it took us one day half an hour to extricate the boat again, backing up the wheel. It was a hard job to extricate her. Then you can look down below the surface and see all the heavy matter dropping

down, and there is potato peelings and burlap bags and cotton seeds and so on, and the water has kind of a milky color with all that stuff in it, the most filthy mess I ever saw. Sometimes you follow the garbage all the way in to the Lightship, to Scotland Lightship. I have followed the garbage in the ocean in toward the shore sometimes for an hour—over an hour. I couldn't tell at what rate of speed I was going; about 7 miles. I have seen that material floating in to the [435] shore lots of times. I have seen it outside the beaches coming in to the beaches. I have seen it coming in and after coming in. I have seen it come in at Seabright Beach. When it is dumped out there it is all decayed matter. When it gets to the beach it would be the same condition. It wouldn't be any better. When it gets to the beach it stays there until somebody comes and removes it. Once in a while they clean the beach off. The fishermen get together and clean the beaches off and bury it in the sand. I can't say I have ever identified objects in the mass of garbage one day and seen them again afterwards. I have seen boxes out there that I would recognize the day afterwards as being the same boxes miles away from that position. [436] I couldn't say I have ever seen anything among objects that had a name or place on them, that would indicate where they came from. There were names or letters on these dumping scows to indicate where they came from. The Street Cleaning Department's initials S. C. D. were on the scows. I was present when Mr. Smack put the bottles containing the red post cards into the garbage. They were put in right where the scows were dumping. Right in the middle of the garbage. I threw some of the bottles over myself, sometimes. I couldn't say how many different times did we put bottles in the [437] garbage out there. Mr. Smack has got the records. I would say from memory about a dozen times.

For Plaintiff—M. Hall, cross.

On *cross examination.* I was hired by Mr. Smack for this purpose. I was paid by Mr. Smack. I was working for the Attorney-General of the State of New Jersey. Just as soon as the scow dumped the garbage we were right alongside within sometimes 12 feet of the scows when they dumped, and we would throw a bottle overboard at the same time. Mr. Smack has a record of the date when bottles were thrown into the garbage at the time of the dumping. [438] The crew on these barges and scows and tugs would necessarily see us. They couldn't help it. They would know that we were there. How many days we threw bottles in I can't tell exactly, because I have to depend on my memory—about a dozen times. We would throw about a dozen bottles in every time we went out. All told, we probably threw over, maybe 150 bottles. These bottles were taken out from the shore. The size and shape of the bottles was like mostly ginger ale bottles. They were pint size. In height I think it would be about probably 8 inches. [439] The width of the bottle would probably be three or four inches. Before we threw these bottles over, they were securely corked. They were sealed with a cap, a bottle cap. Cards were put in those bottles. We put the date on the day following the day we went out. You see, we went out in the morning with the bottles in the boat, and the card would be placed in the bottle that morning and written that morning. How soon before the cards were put in the bottles they were dated I couldn't tell. Mr. Smack brought them aboard the boat when he was ready to go. When he brought them on board the boat they were already dated. He didn't have any dating stamp on board the boat with him.

The only time I was out to sea, to observe [440] the dumping of these scows, was this period of time between April and July of this year. I observed that these scows dumped at a given signal. That was a blast of the whistle from the tug. Then the operation of dumping consumed about 20 minutes of time to a scow. It would

probably take three-quarters of an hour before all the scows were dumped. As a rule they towed three scows out in one line, and one scow dumped first, and before the three scows had dumped it occupied three-quarters of an hour. While the dumping was going on, the tug was pulling the scows around in a circle. The distance that the tug and scows would travel from the time they commenced to dump until they had completed the dumping, [441] I judge, would be probably a mile. The tug would go very slowly while in the process of dumping. Then when the scows had completely circled around the dumping they proceeded on the way home again. I don't know whether they were closed. There was still garbage left on the scows, on the ridge pole. Sometimes there would be great heaps of it. Then the men went up and cleaned off the garbage down on either side of the ridge pole. On the way home. That is after they completed that turn on the way home. After the three scows had dumped and after they made that circle and the tug was heading towards home again, then they would go on home. They would go home in a northwesterly direction. The dumping operation covered an area of a circle having a diameter of about a mile across.

[442] On *re-direct examination.* I have seen them cleaning the scows quite a good ways; about half-way in home. I saw the scows at the time the picture was taken that shows the Scotland Lightship. I saw that picture. I saw the string of scows over there at the time. I don't recollect whether they were cleaning, but I will say that on the way going out we met a scow coming home, half-way out. Between the two lightships we met the scows sometimes coming in and it would be too late to catch them dumping. Sometimes we would miss them but we would see them coming in, and after we got by the scows we could follow the trail of the scows all the way out to where they dumped, probably

6 or 7 miles from that stuff to the dumping ground, dumping out all the time, and we could follow that trail out to the dumping place.

On *re-cross examination.* [443] That is a garbage trail. It is grease and garbage on the water. It is all kinds of refuse, lemon peels, water melon rinds. After the main dumping, what is left on board the scows after the dumping. That will gradually fall off. They rake that off the scows. It takes time, consumes some time, and sometimes they will be half-way home before it is all out of the scow. I picked up this trail between the two lightships, about 8 miles off from the point of Sandy Hook. They were cleaning off garbage at a point that could be observed from the Scotland Lightship; not every time but at times. I have seen them do that at times. At those times I was on the boat. [444] I would be close enough so I could see it. On the way out, you know, we passed both sides of the Scotland Lightship—on the way out, and then sometimes we met scows coming home. When they are coming home I don't know whether they are open or closed, because the doors are on the side, and I never paid any particular attention to it, but we will see the scows and then we will get the direction from the trail that they leave behind them—get that direction on the way out, and follow that trail all the way out to where they dump. Then we came out to the dump and found probably there would be a square mile of it. It would probably be scattered by the time we would get out there, and for over a mile square you would see nothing but garbage scattered all over. It can't remain in one spot very long, because you throw anything on the water and it must move, either in one direction or another. A boat would leave a wake but not a trail. But this was a trail of garbage. The scows always leave a trail of garbage on the way home. [445] They always do,

naturally. Every time that I went out there they did not always leave a trail of garbage all the way right in, but part of the way. It would depend on how much there was left on the scows after the dumping. Sometimes there would be more, sometimes less. I would say that trail was seven miles long at times. I only go by the speed of my boat. The boat goes about 7 knots an hour, and we oftentimes follow that trail out until we got to the main part of the dump, and when we got to the main part of the dump it is scattered around for a greater distance or greater area.

The garbage will spread along the lines of the tidal currents. I am prepared to say that what you called the "trail" of the boat was not the natural movement of garbage in the water; not from the boat, because I could see it falling off the boat all the time on the way home. I would see falling off [**446**] water melon rinds and cantaloupe rinds and orange peels, lemon peels, onions and things like that. The quantity would be sometimes great and sometimes less, and sometimes we would get into a little patch and then into another patch. It wouldn't be continuous dumping all the way in; it would be in small patches, but there was enough to show the way out to the place where they had dumped. It would show the general course. That is the course we would go on, yes. If we hadn't seen that trail, we would have used the compass, of course, and then kept on running, but after we got into this trial we wouldn't look at the compass at all—just follow that trail out until we got out to the main dump. We would reach that trail somewhere south of Ambrose Lightship and out to where they dumped, about 25 miles east or southeast of Sandy Hook. [**447**] It wouldn't always be the same time at the same place. Sometimes it would be sooner; sometimes we would meet it further out, closer to the dump; sometimes closer in. Sometimes we would get out there just when the scows had dumped,

probably half an hour after they had dumped and were on their way home again. I can tell you where they dumped, the place where the main dump is. I can tell you where that is. About 25 miles southeast by east of Sandy Hook. That brings us about 43 or 44 miles south of what is called the Cholera Banks. The distance from the dumping ground at which we would pick up this trail that I said was left behind the scows, would depend on the time we met the scows, sometimes closer in; sometimes further out. Sometimes we would meet them half-way in. Sometimes we couldn't pick up the trail. The sea would be rough and it would be scattered and we couldn't pick it out. But when the water was smooth, when it was fine weather, there was a continuous trail all the way out. By "all the way out," I mean [448] from where we would meet the scows. Sometimes we would meet the scows four or five miles inside the dumping place. Then it was four miles we followed the trail out to the dump. That trail would extend from the dumping ground in about four miles. Sometimes more, sometimes less, depending on how much they had left on the scows when they came in. I don't suppose it would ever exceed five miles. I don't know—yes, I guess it would. Sometimes it would be more than five miles. Five miles would probably be a very liberal estimate of the distance. Maybe an hour to run into it. We keep on following the trial and keep seeing the dump and finally run into it. That would be sometimes an hour from when we met the scow until we get out to the dump. The boat would travel at the rate of about 7 knots an hour, depending on conditions. Conditions weren't always the same. Sometimes it would be windy and sometimes fine weather. The length of the trail would depend on the amount they had on the [449] scows, the amount they had left after they got through dumping. That would be the amount of material up on the ridge pole.

For Plaintiff—B. Y. Patterson, direct.

On *re-direct examination.* It would depend on how far in toward home they had gotten before we met them. It all depends on whether we met them at Scotland Light or met them further out. This different-colored water here in picture number 12 appears to be a wake behind a scow. I don't exactly remember this one here. I couldn't tell. It appears to me to be the hind part of the scow [450] and the wake after it. I don't recognize that. I couldn't tell you from the picture what direction they are moving in.

On *re-cross examination.* You can't tell what direction they are making, because there is no land in sight from Complainants' Exhibit Number 12. You would be apt to be going south or any direction. You only see the scows and the water. You can't tell by looking at that picture what direction they are moving in or what direction they came from.

B. Y. PATTERSON. [451] On *direct examination.* I live at Spring Lake. I was born there. I have lived there ever since. My business is real estate and insurance. I have always observed the garbage on the beach. I have observed grapefruit skins, lemons and onions and all kinds of vegetables, potatoes, clothing of all kinds, underwear, stockings, shoes, rubbers, boots, ladies' hats, dead animals, banana peels, all sorts of truck, valises, old bedstead, wooden bedsteads, mattresses and springs, parts of automobiles, old tires, tin cans, bottles of every description, bottles of medicine, half-filled bottles with medicine, all kinds of pasteboard, small wooden boxes. [452] I have seen labels on some of the bottles, the names of New York druggists. I have seen cases, wooden cases that hold bottles, with New York marks on them, crates and hogsheads, barrels with tags on them from New York. I have noticed these things and sales slips from New York. The condition of these articles depends

on how long they have laid on the beach. Sometimes they are wet, sometimes they are dry. The garbage is in a very bad state. It ruins the beach while it is there. What effect it has on the development of our community, I have no way of telling. I don't know what effect it has upon my business. We have always had it. I don't know [453] what effect it has till we get rid of it. I don't know how it feels to be without it.

Q. Well, is it a matter of public complaint or private complaint?

A. Yes, it is a very great one.

Everybody complains and wants to know why it isn't cleaned off.

On *cross examination.* I haven't followed the source of these materials that I have observed upon the beach.

FREDERICK F. SCHOCK. On *direct examination.* [454] I live at Spring Lake. I am president of the First National Bank of Spring Lake, and president of the Hastings Square Hotel Company. That is one of the hotels at Spring Lake. It accommodates 350 guests. We have about 20,000 day guests during the season.

I am familiar with the conditions on the beach as to garbage. The beach after a considerable blow from the east or northeast, is littered with all sorts of garbage and refuse. It consists of grapefruit, oranges, carrots, potatoes, cabbages, lettuce, turnips, bananas, pineapples, onions, bottles of all kinds, cans, boxes, trunks, mattresses, and lots of wood, [455] all sorts of pieces of wood, boxes and crates and so forth. It has a very detrimental effect upon the beach. I am president of the bank down there, and the people continually come in and complain about the condition of the beach, and we hear complaints from the manager of our hotel about the rubbish on the beach. I can't identify anything as coming from any particular place. I have been out where it has

been dumped through. Going across the seas and coming in from the West Indies several times I have observed the garbage as it has been dumped there. I have never seen it actually dumped, but I was told it was dumped by the barges from New York City. As to what areas I have seen it floating in out there, the ocean is pretty large, and I should judge it would be several acres from the looks of things. It was quite widely distributed when I saw it. It had [456] been there for some little time. By "some little time," I mean two or three hours. I saw all sorts of vegetables. The contents of the garbage out there and the garbage that we find on our shore was the same.

On *cross examination.* I couldn't say it was the same identical pieces of garbage. When I testified to the various kinds of materials I consulted a record. It was made while I was taking my lunch today. It was made by me in preparation for the testimony I have given here. The ship's officers told me that the garbage that I saw at sea was dumped by the City of New York. [457] He said, "That is where the City of New York dumps their garbage." Other than that I don't know where the garbage came from.

On *re-direct examination.* I made the memorandum so that I might readily put down everything that I had seen there. And I failed to mention that I have seen dead dogs and cats on the beach. I had them on my list but I missed them. My memory is refreshed now by referring to the list.

FREDERICK N. REICHEY. [458] On *direct examination.* I live in Bradley Beach. I am city clerk and collector. I have been there for fourteen years. I have been familiar with the beach at Bradley Beach for a period of 15 or 20 years. The only information that I can give with respect to the garbage is the fact that, as

city clerk and collector, we pay the vouchers to the men who carry up the garbage from the beach, particularly during the week of February 7 of this year, which we made a memorandum of. That shows that we expended the sum of $477.23 for [459] beach cleaning purposes during that week. I have no way of telling how much it has cost in other years, because that comes out of the general beach fund appropriation. We have been troubled with garbage for several years that I know of personally, and from hearsay a good many years previous to that. We have frequently prominent citizens from New York, Newark and elsewhere complain of the condition and stating that unless there is some action taken to abate the condition, they would be compelled to seek resort accommodations elsewhere.

We have a public bathing beach. Because of overcrowding conditions, during the past year particularly, it was necessary for the governing body to put into effect a tag system whereby they would accommodate the residents of Bradley Beach and their guests only; others would be permitted to use the beach run by the bathing estab- [460] lishments. It was necessary to put that rule into effect, and it went into effect on the first day of August, 1929. Each applicant was compelled to appear at the booth at the beach front, make application, sign their name and address, and they were issued a tag which you see here (showing). The borough constructed fences at the various bathing beaches and had lifeguards and attendants at the entrance of each of these enclosures, and would permit no one except those who wore the tags to enter. I might say that the tags issued in the borough were only issued to people over 12 years of age. There were 19,760 tags issued from the tag booth. That was during the period from August 1st until August 30th or 31st, I am not sure which, and that was for the accommodation of Bradley Beach

residents and summer guests only, which included hotels and rooming house, boarding house guests.

I have some pictures of the beach conditions here. They were taken by Mr. De Carta of Asbury Park—rather, his name is Otto Weikert. It was formerly de Carta [461] and now it is Otto Weikert. I am familiar with the scenes that are taken there. I can identify these as pictures that were actually taken on our beach. They were taken in the summer of 1927, I am quite sure. I have no identification of date other than that. (The photographs were marked "Plaintiff's Exhibit 76" to "Plaintiff's Exhibit 82," inclusive, and admitted in evidence.) Exhibits 76 to 82, inclusive, [462] are pictures of our beaches and people on the beaches at the time they were taken.

I have prepared a list of hotels. It is entitled: "1929 assessed valuations of hotels, boarding houses and rooming houses in the Borough of Bradley Beach, together with total room accommodations." I am secretary of the board of assessors. I have the records at the office. These are taken right from the records. I can verify the accuracy of them. [463] I include here also the charity properties and various religious societies. We have four charity societies in the Borough of Bradley Beach, which we take care of, particularly the German Baptist Home on Fifth avenue, which accommodates 50 guests at a time; the New York Society of the M. E. Church at 106 Cliff avenue, accommodating 80 guests at a time; the Orange Fresh Air Home, 301 Newark avenue, accommodating 75, and the Howart Mission, 212 Evergreen avenue, accommodating 50. I have pleasure resorts, theatres and bowling alleys down here. (The paper was marked "Plaintiff's Exhibit 83," and admitted in evidence.)

[465] FREDERICK BAILEY. [466] On *direct examination.* I am stationed at Avon, N. J. I am a Coast Guard. I was transferred to Avon the 10th day of July, 1925. I have been in the Coast Guard Service for 28

years. I have been along the Jersey coast all that time except during the two years that I was up in the New York Division at Battersea Park, New York. Our duties along the shore here call for boat drill, and sometimes I go out to sea probably a mile. I never go out to where the garbage scows dump. I see plenty of the garbage along the shore when we have an east wind, and especially strong east wind, or anywhere there—northeast or east wind, [467] you get any kind of garbage that might be taken from a house or hotel, such as decayed fruit or anything like that. Some of the things that come in are oranges, probably half an orange that has been cut in two and served, and grapefruit, and probably cabbage or something like that. Sometimes there are dead animals down along the beach, sometimes cats, sometimes dead dogs and—I don't know as I can recall every kind of different thing, but I have seen everything that might come from a garbage pail. This comes in at various times. It doesn't come in regular. If you get an east wind it comes in as a rule. Not at all times, but sometimes. Last spring it came in in very large quantities, so that you had to rake it up on the beach and cart it away with a wagon. There is too much of it to come from a passing vessel.

[468] On *cross examination.* I have seen scows going out and returning from the dumping grounds, when I was in New York Bay. I do not know that is done under a permit from the supervisor of the Port of New York. I am connected with the United States Coast Guard. That is a branch of the service. [469] I do not know Captain Henderson, supervisor of the Port of New York at the present time. I live here in Avon. I live near the station. I have lived there ever since I have been in the service. I have met Mr. Smack. I don't know him. [470] I met him probably four or five days ago. It might have been a week. He spoke to me about the case.

For Plaintiff—Frederick Bailey, cross.

I have traversed the coast here for a distance of about a mile out from the coast as a drill each week. That is all that is necessary. [471] One time they wanted to test out some suits for floating in the water, and I was out on the Coast Guard boat at that time. That was more than a mile, probably three or four miles. That was during the war. I couldn't tell you what year. It was during the war. The greatest distance I have traveled eastward from the Jersey shore on the Atlantic Ocean as a Coast Guard doing any kind of work [472] appropriate to the position of a coast guard was about a mile. As a coast guard I see the passing vessels. There are a number of vessels pass to and fro each day north and south along the Jersey coast; some days we might get 10 or 15 vessels; other days three or four; other days only one or two. I have not seen these vessels dumping garbage. It is not a part of my duty to watch them. I have nothing to do with those boats. We watch vessels for any help that [473] they may need. That is our duty, to watch vessels, passing vessels or anything like that. But these scows, as I understand it, that go out of New York Harbor, don't come anywhere down this way. They go out of New York Harbor. They go to sea. I can't tell you where. I couldn't tell you how many miles.

I would say that I have been able to identify the garbage that I have seen on the beach as being the garbage that has come from the sea dumps by the quantity that comes in. I never marked any, to be able to tell you whether it came out of the dump scows or not. I would say that the garbage on the beach is the garbage dumped by the City of New York because there is too much of it on the beach to come from any passing vessel that ever goes by. A passing vessel might throw [474] a little overboard. But it wouldn't come in any such quantities as we get on the Jersey shore. It is the quantity that is the basis of my judgment as to the origin of the garbage. That is my opinion. It is my opinion that it comes from

the dumping of vessels, of the scows, because if it does not, you would get a little along the beach every time an east wind comes in.

On *re-direct examination.* If it came from the vessels [475] it would come ashore from a southeast wind just as well as an east or northeast wind.

On *re-cross examination.* I never seen it come on the beach with a south wind. I never noticed it, to the best of my knowledge. I have never noticed it with a south wind or a southeast wind, unless you get a strong east or northeast wind, and then it shifts around to the southeast, then you might. What had drifted down with an east wind or northeast wind, [476] then with a southeast wind that might bring it in. I said if it happened to be blowing from the northeast—if it started up here with a northeast or east wind, and the garbage started to come in, but just before it got ready to come ashore the wind might shift to the southeast and then the garbage would come on in, because it was near the shore and it would come on in with a southeast wind. The wind makes a difference, because with a northeast wind the garbage comes from this direction, probably from off the lightship, and if the wind happens to blow for four or five days from the northeast, then all the stuff comes in on the beach that has been dumped up here northeast of us. When the wind blows from the northeast for four or five days it comes in on some part of the Jersey coast, but not all the time. The wind doesn't have to be so strong. I have seen it come in when it has been probably blowing 20 or 30 miles an hour. [477] That is not a real bad storm, you know, but if we have easterly weather for several days, quite a little of that stuff works in, apparently from the south. No passing vessels going by ever throw out such a quantity of stuff as we get. My only basis for expressing any opinion as to the origin of the garbage is the quantity that I see on the beach.

For Plaintiff—Benjamin F. Newman, direct—cross.

BENJAMIN F. NEWMAN. [478] On *direct examination.* I live at Manasquan, New Jersey. I am stationed at Shark River Coast Guard Station, at Avon, New Jersey. I am boatswain's mate, first class, U. S. Coast Guard. I have been in the Coast Guard Service for 14 years on the New Jersey shore. I am familiar with the garbage condition that has been testified to. You can take it after a storm, an east wind or northeast wind, it will pile up on the beach in large quantities. I have seen it in large quantities. The patrol here at Avon is [479] seven-eighths of a mile from the station to the Inlet, and I have seen it solid along in there, so that they have raked it up and carted it away for maybe a day or so. I have seen grapefruit, oranges, lemons, onions, pineapples, cocoanuts, cats, dogs, chickens. I have never seen anything in it to indicate where it came from. I have seen it in the water when it was washing in. I have seen quantities of it floating on the surface of the water. I have seen it when it was in what we call the undertow, just before it breaks along the beach. I have seen it kind of thick and be kind of spread out along. [480] This occurs after a storm or an east wind. I have seen it before ever I came into the Coast Guard. I have seen it for 18 or 20 years myself.

On *cross examination.* The only time I have seen garbage on the beach has been after a heavy storm; after a blow. A blow means a good strong gale. There are seasons of the year when the storms are very severe on this coast. Some of those storms have washed out hotels to sea. [481] They have washed out jetties, piers and bulkheads. You can look for good storms in February or January, either one. The months of January and February, I would say, from my experience as a coast guard, covering a period of 14 years, is a time

of the year when the storms are very severe along the Jersey coast, and sometimes in April.

WILLIAM J. BUTLER. On *direct examination.* [482] I am a Coast Guard. I am located at Loch Arbour, New Jersey. That is the Deal Coast Guard Station. I have been in the Coast Guard Service going on 25 years, all on the coast of New Jersey. I am familiar with the garbage conditions along the shore here. Every time there is an east wind or northeast wind for a period of two to three days we always get a large amount of garbage. It consists of beans, peas, beets, potatoes, onions, carrots, especially orange peel and grapefruit peel. Sometimes dead animals. There is also a very large amount of trash. By "trash," I mean pieces of lumber of all descriptions, and now say, for instance, about a month after Christmas we usually expect a storm of Christmas trees and Christmas toys, seasonable contributions. [483] In grapefruit and oranges there seems to be no season. After every prevailing east or northeast, or wind in that direction. Christmas trees and Christmas toys and things of that sort come in after Christmas. At the present time there are beets and turnips and potatoes and onions, and occasionally, as I said, dead animals.

[484] As far as I can say the extent of the beach affected by this garbage will go around as far as, say, Beach Haven. I have been stationed in south Jersey but I never noticed it on the south Jersey beaches. I presume the current and the curvature after you get below Barnegat does make a difference. (Referring to Beach Haven on a large map.) I have seen garbage in the water floating on the surface or in the undertow. I have seen it before and I have seen it after it came on the beach. A rising tide floats some of it away. I have noticed articles in the garbage that had names or addresses on them. The articles were milk bottle

tops and boxes. A very large amount of old letters and such things as that. [485] The names of the places they had as addresses were New York City, that is the milk bottle tops. That is all I have noticed. On some whiskey cases I saw London and Scotland and those places.

On *cross examination.* It was a regular whiskey case, the last I saw. On these milk bottle tops that I have seen, they had addresses of New York firms, distributors, New York addresses. I can't tell anything that was on those tops [486] except New York City. Perhaps there was the firms' name. The name of the firm was Sheffield Milk Company. That's all I can remember. There is such a milk distributor in New Jersey. [487] (Discussion between counsel regarding witness' statement about dumping garbage.)

"Q. You are speaking for the citizens of your neighborhood, aren't you?"

By Mr. Crowe.

Q. Answer yes or no.

A. I have not seen any neighbors in my vicinity. (Motion to strike that out as irresponsive. Motion overruled. Exception.) [488] I have only known Mr. Smack just about a week. I have talked to him. I live at Avon, New Jersey. Prior to a week ago I never saw Mr. Smack. Before I came here this month I had spoken to Mr. Smack about this case. And Mr. Smack has spoken to me about this case. He told me perhaps I would be called as a witness.

Q. And when he told you that, you prepared to give this testimony?

A. No preparation at all, because I have fallen over this garbage for about 20 years, you see. There was no question [489] about the garbage coming on shore. I have gone out nine miles to sea as a coast guard in the performance of my duty as coast guard. That is

unusual. The usual distance we go out from the shore is according to what we have to go for. Now, if it is bathing, it is right on the beach; if it is on the steamship lines, it is about three miles; if it is anything of other nature, such as pleasure boats, they may be out four miles and they may be out five miles, they may be out half a mile. A cost guard [490] is supposed to remain at his station until he is called. I have never been out to the dumping grounds.

On *re-direct examination.* Here are some Sheffield milk bottle caps. Is that the kind you are talking about? (Producing milk bottle caps.)

A. Yes, sir. Many thousands of them come ashore.

Mr. Crowe. And you notice the inscription on this cap, Christmas seals?

A. Of course.

By Mr. Minard.

[491] Q. That is just this season.

A. Some of them don't always have that. They are liable to have it.

Q. Last Friday and Saturday—

Mr. Crowe. Is there no date other than Friday? How can you say last Friday?

Mr. Minard. They were sending out Christmas greetings last Friday.

A. Pasteurized at 632 West 125th street.

Mr. Crowe. Now, examine it. Do you see the word "New York" or "New York City" on there, Captain?

The Special Master. I don't know that those have been introduced.

Mr. Minard. No, they have not.

Mr. Crowe. All right. You asked him and I wanted to follow it up.

Mr. Minard. I was just identifying them as Sheffield caps.

Mr. Crowe. Are you going to put the witness on?

Mr. Minard. Yes.

The Special Master. The witness is allowed to identify the kind that he saw by this.

Mr. Crowe. Then we might for the record state that the witness identifies a piece of pasteboard about 1½ inches in diameter—

The Special Master. Well, that will speak for itself. [492] before we get through with it.

E. ALLAIRE CORNWELL. On *direct examination.* I live at Red Bank, New Jersey. (Witness shown two milk bottle caps.) I saw them for the first time when I found them on the beach at Long Branch about a mile this side of the Long Branch pier. That was Wednesday afternoon, about half-past three, I should say. [493] They are milk bottle tops of the Sheffield Company, New York City.

Mr. Crowe. Where does it say New York City?

Mr. Minard. There is only one 125th street in the United States.

Mr. Crowe. You can prove it if you want to. It is a matter of proof.

Mr. Minard. Certainly. Go ahead.

A. It says at the top: "Have you bought Christmas seals yet? Grade B." Then in large capital letters: "MILK. Pasteurized at," I think it is, "532."

Q. Here is a better one, clearer.

A. "532 West 125th street. Friday." Then in large letters at the bottom: "SHEFFIELD."

Q. Do you know where 125th street is?

A. In New York.

Mr. Crowe. I object to that question unless it be the 125th street mentioned on this label.

The Special Master. Objection overruled.

Mr. Crowe. Note an exception.

For Plaintiff—E. Allaire Cornwell, cross.

[494-495] (The milk bottle caps were marked "Plaintiff's Exhibit 84," and "Plaintiff's Exhibit 85," and admitted in evidence.)

Q. I show you a paper and ask you what that is?

A. That is a billhead of Stern Brothers.

Q. Where? What address is on it?

A. "Forty-second and Forty-third streets west of Fifth Avenue, New York."

Q. And who is it addressed to?

A. It is addressed to Mrs. Sadie Tobin, 309 West 71st street, New York, N. Y.

Q. Where did you find that?

A. I found that at approximately the same place as the milk bottle tops, on the sand at Long Branch about a mile this side of the Long Branch pier.

Q. When did you pick that up?

A. That was the same time, Wednesday, about 3:30. [496] (The paper was marked "Plaintiff's Exhibit 86," and admitted in evidence.) I also picked up pieces of boxes. The board says: "Stolzman"—I am not sure about that. It looks like "Neiman, Inc., 258 Greene street, New York." And on the other side it says: "From," and a large capital F, capital B, Co., "F. B. Co.," and at the bottom "Case No. 10,081." That was also found on the beach at Long Branch. The part that I have read is on what I would say was the side of a packing box, a medium-sized packing box. In the same place at the same time [497] I saw a few grapefruit and a few oranges. I noticed one grapefruit floating in the water, and I noticed several pieces of grapefruit and oranges on the beach washed up by the storm. There was also a miscellaneous collection of small sticks, boards.

On *cross examination.*

Q. Will you examine Plaintiff's Exhibits 84 and 85, being the milk top covers referred to by you, and tell the Court whether or not the words "New York City,"

For Plaintiff—E. Allaire Cornwell, re-direct.

"New York," or the initials "N Y," or "N Y C" appear thereon?

Mr. Minard. Don't they speak for themselves?

A. No.

By Mr. Crowe.

Q. They do not? You have examined both exhibits and none of those indications are contained on any part of the label?

A. No, there is nothing except—

Q. We know what is on there. Is there any date shown on any of those milk top covers?

A. There is the day of the week.

[498] Q. I asked you—answer my question, please. Is there a date shown? You know the difference between a day and a date. Answer yes or no.

A. No.

Q. There is no date. Thank you.

On *re-direct examination.*

Q. What day is on there?

Number 84 shows the day of the week of Saturday on it; number 85 shows Friday. Both of them contain the Christmas reference, the Tuberculosis Association Christmas seal. I am familiar with New York City. [499] I have lived around here all my life. I know where 125th street is. It is well uptown in New York City. I would say 125th street means New York City, to me.

Q. What number is that (indicating)?

A. 632.

Q. Will you look into the New York telephone book and see if Sheffield Farms Company have a place of business and a distribution place at 632 West 125th street? (Handing a telephone book to the witness.)

A. It says: "Sheffield Farms Company, Incorporated. Harlem Division. Office 632 West 125th. University 27110."

For Plaintiff—W. D. Townsend, I. T. Gifford, direct

Q. And what does the head of the telephone book show?

A. Manhattan.

Q. And Manhattan is where?

A. In New York City.

Q. It says so on the front of the telephone book?

A. Yes, sir; that is right.

W. D. TOWNSEND. [500] On *direct examination.* I am a coast guard. I have been so for 22 years along the Jersey coast between Shark River, Spring Lake and Monmouth Beach, within a radius of 10 or 15 miles along the coast. I am familiar with the garbage conditions on the shore. At times of easterly wind, tremendous quantities of garbage drift up on our beaches, such as oranges, lemons, grapefruit, according to the season of the year. In the summertime you see corn, watermelons, muskmelons—depending on the season of the year, the kind of garbage that drifts up. [501] At times, after Christmas there are Christmas trees and books and literature of all descriptions coming on the coast. Usually after being washed in the ocean a lot, you know, it is in a decayed condition. The areas of the beach it affects are from high water mark down to low water mark, the entire areas, as high as the tide will reach. I see it floating in the water. The only evidence as to where it comes from is things [502] such as milk bottle tops and different literature with writing on it. I never was particularly interested. I saw lots of barrels, lots of barrels coming in marked "Fulton Market, New York." I have seen kerosene barrels come in with different names on them, but I never memorized them or made a note of them.

I. T. GIFFORD. [503] On *direct examination.* I have been a coast guard for fifteen years at Spring Lake. I have never seen the garbage scows dumping at sea. I

have seen the garbage in the sea along the beach. I have seen it floating in the sea off the station. It affected the shore from as high as the sea goes, high water, to low water. It just washes up on the beach and stays there until it is taken away—decays and rots. It consists of oranges, grapefruit, spinach, beets, lemons—most all kinds of fruit and all kinds of vegetables. [504] Last spring there was a lot of spinach, in the spring of the year. I have never noticed any marks or anything to indicate the origin of these packages or articles. It occurs about every time the wind comes from the east or northeast, a strong wind.

HENRY D. PARKER. On *direct examination.* I am a U. S. Coast Guard at Seaside Park, New Jersey. I have been in the Seaside Station about nine years. I have been in the coast guard service for 20 years. I have not seen the garbage scows dumping at sea. I have seen the garbage in the sea. All along the coast. Sometimes it would cover half an acre. I have seen patches of it where it would cover fully half an acre. I have had to sail through it. It does not have any effect upon the sailing. I have seen it on the beach in large quantities, at times; at other times, small quantities. [506] It was in bad condition I would say. It is spoiled fruit mostly. There are dead dogs, dead cats, chickens, ducks, turkeys—anything you happen to see—full of it. I never took particular notice of identifying marks.

C. BROWER. On *direct examination.* I am a coast guard at Chadwick, New Jersey. [507] I should judge that's 20 miles south from here. I have been in the coast guard service going on eight years. I have never seen the scows dumping garbage at sea. I have seen the garbage in the sea at different places along the beach where I have been in different stations, from Sandy Hook to Chadwick, Deal, Shark River, Spring Lake,

Manasquan, Chadwick. I have never encountered it sailing in the ocean. I have seen it on the shore, lots of it. By lots of it I mean wagon loads, in other words, all along the shore. It consists of half of oranges, grapefruits, pieces of pineapple, cocoanuts, dead chickens, dead dogs, dead geese, cats, milk bottle tops, cases of herring. I couldn't identify any of them. [508] At different seasons I have seen such things as pieces of watermelon, corn, corn cobs, after the corn has been used, muskmelons, pieces of muskmelon tops. Along after Christmas at holidays, I have seen Christmas trees. In cases of decayed herring I have seen an Italian name on them, but it was New York City. But I couldn't read the name on them, I mean who it was addressed to. I couldn't say whether it was addressed to or from them or who it was from. I never paid any attention to them to notice names or any other articles.

On *cross examination.* I couldn't tell whether those cases were being consigned or shipped to New York City or from New York City. [509] I do not go out daily into the sea. We most generally have a boat drill once or twice a week, according to the time of the year. In the winter months we have it once a week and in the summer months we have it twice a week. Unless there was a call for assistance you wouldn't have occasion to go out in the water more than once or twice a week.

JOHN C. SALTER. On *direct examination.* I am a coast guard at [510] Chadwick Station, Lavallette. I have been there two years and three months. I have been in the coast guard service for four years and three months. I have never seen the garbage scows dump at sea. I have seen the garbage in the sea both on the beach and when it has come ashore. I have seen, floating in towards the shore an acre or two, to two or three hundred yards along the beach. I have seen it on the beach thick in

places, large quantities of it. It consisted of grapefruit, oranges, banana peels, apples, cats and dogs, boxes. The condition is pretty bad at times. [511] After a northeast storm it is bad. It is a pretty bad thing along the beach. It is spoiled. All the fruit is spoiled. I have never identified any names of places or that sort of thing on any packages or papers in the garbage.

L. E. MITCHELL. On *direct examination.* I am a coast guard at Highland Beach Station, Seaside Park. [512] I have been there eleven years. I have been in the coast guard service for 28 years. I have not seen scows dumping garbage at sea since I have been in the coast guard. I have seen the garbage in the sea. I have seen it as far offshore as you could see, pads of it. And also in the undertow or in the surf and out on the beach. I have seen it in windrows along the beach as far as I have been above Barnegat and south of Barnegat as far as Lovelady Station. I have observed as being contained in the garbage practically anything you are a mind to mention, spoiled fruits, vegetables, dead dogs, dead cats, fowl. I have never taken particular notice of any articles that had names or addresses on them. [513] No doubt I did at the time, but I have forgotten it if I did.

On *cross examination.* They claim you can see 19 miles to sea. You can see to the edge of the earth. That is about as far as I know. I couldn't see garbage that far. Don't mistake me that way, because I couldn't.

On *re-direct examination.* There hasn't been very much garbage since after a storm we had, I think it was around the 1st of June. There has been very little this summer since that time.

HENRY D. PARKER. (Recalled.) [514] On *direct examination.* The latest time I saw any garbage on the beach was about 8 o'clock this morning. It was, as I told

you awhile ago, a little of everything, oranges, apples, bananas, pineapples. There is an awful lot there now. It is very near knee deep down at Seaside Park. It is along the beach as far as you can see. I didn't walk down the beach. I just walked out on the beach to take a look before I came up here this morning.

On *cross examination.* This place is 22 miles south from the court room. [515] I did not examine that garbage very closely. I just went and saw it was there. We have it after every northeast storm. I couldn't say where it comes from. I don't know that. But it is after a storm. I haven't been off duty. I am on duty all the time. I don't patrol the beach myself. I am indoors. This observation was made from my station. [516] The elevation of my station above the beach I would say is about—well, that is a little hard to answer. I would say six to eight feet. I walked out on the beach front from the station. My station is a very short distance from the beach—that is, from the surf. I do that most every morning, walk out on the beach in front of the station in order to see that everything is all right, and there was garbage there this morning and plenty of it. I walked about 50 yards. The materials that I mentioned were right in our roadway. We have to shovel that aside in order to get our boat out. I left the men shoveling that away when I left. We have to shovel that one side in order to get our boat clear if we have to, in order to get to the water. I don't know where that garbage came from. I was served with a subpoena to testify here. I was served with that subpoena [517] this morning after I observed the garbage.

W. H. WILBUR. On *direct examination.* I am a coast guard at Mantoloking. That is south of here. I have been in the coast guard service for twenty-five years on the Jersey coast all the time. I have been at the Man-

toloking Station since June 1, 1923. I have never seen garbage scows dump at sea. [518] I have seen the garbage on the sea off in front of my station. There were quite some patches of it, maybe an acre or half an acre—something like that. I have seen it on the beach. It consists of all kinds of garbage, onions, carrots, turnips, beets, potatoes, watermelons, oranges, lemons, grapefruit, cocoanuts, garbage of all kinds. It contains wood, pieces of wood, sometimes old beds, bedding, mattresses, Christmas trees, baskets. I have seen quite some of it on the beach. I have seen it at the end of my patrol. That is a mile and a quarter or mile and a half—something like that. It would be sometimes half as wide as the beach. [519] Of course, the beach is not so very wide. There is some of it there now. The garbage there now consists of orange peelings, apples, onions. I have seen pieces of cabbage there. There is not very much there now. I saw it there this morning. I never noticed the names of places or anything like that on the packages. I never bother with it.

On *cross examination.* The wind is blowing this morning about east, I guess, southeast—what little there is. There is not much of it. You could hardly tell what way it was from. Yesterday it was northeast to east, southeast. [520] For the past two or three days the sea has been rough. I have seen it rougher. It is rougher at the bad seasons of the year.

On *re-direct examination.* We have garbage sometimes in the summertime. It is generally there off and on whenever we have some easterly weather.

LESTER BROWER. On *direct examination.* [521] I am a coast guard at Mantoloking. I have been there for 27 years. I have never seen the garbage dumped from the scows at sea. I have seen the garbage on the sea at Mantoloking. I have seen it half a mile at

sea in large quantities, a quarter of an acre of it. I have seen it on shore during all seasons of the year. [522] It consists of practically a little of everything, grapefruit, oranges, bananas, pumpkins, corn, watermelon rinds, muskmelon rinds, cats, dogs, pigs and small sticks of wood and such stuff as that. I have never noticed any articles with marks on them to indicate where they came from. I never bothered with it. I saw some garbage down there this morning, but not very much. It consisted of some orange peels and grapefruit, and most of it was small pieces of wood. Northeasterly and easterly winds bring it.

On *cross examination.* It is mostly wood down there this morning.

On *re-direct examination.* [523] The heavier it is, the longer it takes it to come ashore.

C. C. PERRINE. On *direct examination.* I am a coast guard at [524] Bay Head. I have been in Bay Head five years. I have been in the service for twenty-four years. I have never seen any garbage scows dumping at sea. I have seen them being towed out to sea. I never saw them dump. I have seen garbage floating in the sea anywhere from four to five miles offshore, large quantities of it. I have seen it on the shore. It consisted of a conglomeration of stuff, cats, dogs, oranges, bananas, apples, vegetables of all descriptions, trees, animals of all descriptions. I have seen horses come ashore. The horse was accompanied by quantities of garbage. It was in the garbage. [525] It is so during the summer months that they have to keep three men at work there to keep the beach clean for the summertime. I have never recognized articles that would give addresses or anything. I never paid any particular attention. There was very little garbage down there this morning. Our beach is so narrow there in front of the station, that the sea

washes up against the bulkhead and won't let it stay there. But up on each end there is a little garbage.

A. B. FORSYTHE. On *direct examination.* [526] I am a U. S. Coast Guard at Bayhead, New Jersey. I have been in the service for 29 years. I have been familiar with the garbage in the sea. I have seen it mostly along the coast where I have been stationed in various quantities, from large to small, a half an acre at a time, probably. I have seen it on the beach and in the water, on the beach more. That is where it collects, gathers. I have seen it as far as I am familiar with the patrol each way—[527] I walked a great deal—a mile and a half from my station. I don't know that it interferes with the performance of any of my duties. I see various objects in the garbage. There are a good many bottles with corks in them and cans with lids on them that float ashore. All sorts of vegetables all the time, orange skins, orange peelings, grapefruit, melons, all sorts of fruits. It doesn't land right where I am stationed very well now, because it is very steep there and the ocean washes against the bulkhead, and it goes either side, up or down the beach.

C. W. COOK. [528] On *direct examination.* I am a coast guard stationed in Manasquan. I have been there for twelve years. I have had experience with the garbage. I have seen it along the beach and in the undertow and out at sea. I have seen it in the water to the extent of a half an acre to an acre. I have seen anywhere up to a mile and a half long and anywhere from 20 to 25 feet wide on the shore. It consists of all kinds of garbage, fruit and vegetables, such as grapefruit, oranges, peelings, banana peelings, onions, grapefruit, cats, dogs, bottles and cans, pails, barrels. And I have seen [529] Christmas trees. The garbage, the vegetable matter, when it comes in is in very bad

condition. It was so last summer during July and August that it was impossible for the people to go in bathing, it smelled so bad after it laid there for a day or two. So the borough had to go to work and hire teams and cart it away. I have never noticed any mark that would indicate where it came from.

On *cross examination.* This condition of the beach that I describe, is always the condition when garbage comes on our beach if you take an east or northeast wind. I would not say we would have to have a very strong north or northeast wind to produce garbage on our beach. It would have to be at least 15 miles an hour, in my opinion. [530] Anything under that would not be a wind that produces garbage as a rule. Not unless it is close to the beach. Then, of course, it would come in. The wind has been northeast to southeast for the past two or three days. The sea has been rough and stormy, a strong sea. That condition has prevailed now for three days continuously.

On *re-direct examination.* I have not seen any garbage on the beach this morning. I have seen it out at sea in patches. You take a northeast wind and then the wind shifts to the southeast, it would come in. I do not know if it always comes in throughout the whole length [531] of the Jersey beach at one time. It does on my patrol, on my north and south patrol.

EDWARD ROSWELL. On *direct examination.* I am a coast guard at Manasquan. I have been in the service for three years and ten months. I have had experience with this garbage. I have seen it on the beach where it has been from our north patrol limit to the south patrol limit, all the way from high water mark to low water mark. My patrol limits are about a mile and a half each way, [532] about three miles long. The nature of the stuff is tin cans, bottles, milk cans, dogs, bananas,

For Plaintiff—Edward Roswell, cross.

orange peels, grapefruit, potatoes, onions. It is decomposed. Several times we have raked it up and buried it. Three times, I think it was, last summer during the bathing season we cleaned it up in front of our place and buried it to keep the people from stepping on the bottles, because when they break up, naturally they cut their feet and we had several cases of that last summer, of people cutting their feet on bottles which come ashore there when the garbage comes in. It was very bad there several times last summer, so the people wouldn't go in bathing. There weren't very many people in bathing on account of the garbage in the undertow.

On *cross examination.* Not so many picnickers come to our beach. [533] There are a few, but not so many. There are a large number of little houses along that beach.

Q. And would you say there are not many picnickers that come to that beach then?

A. Picnickers? What do you mean by picnickers?

Q. Don't you understand the meaning of that word?

A. That take baskets over and sit on the beach and eat?

Q. Yes.

A. Well, they don't stop them doing that there, but they have an ordinance, I understand, in the borough against throwing garbage on the beach.

Q. I didn't ask you about the ordinance that the borough had. I asked you whether or not your beach was frequented by a large number of people daily, picnickers?

A. Yes.

Q. Hasn't your beach been referred to as the Coney Island of Jersey? Have you ever heard that expression applied to your beach?

A. No, I haven't.

Q. It is a very popular beach, isn't it?

A. Yes.

For Plaintiff—Edward Roswell, cross.

Q. And therefore quite a few people go there daily during [534] the bathing season?

A. Yes.

Q. So that, when you said before "a few" you underestimated that number, didn't you?

A. Yes.

Q. On Saturdays and Sundays, week-ends, wouldn't there be tens of thousands of people on your beach?

Q. Not that many.

Q. Would you say 5,000?

A. I am a poor judge of the number of people. I couldn't say.

Q. Well, a very large number?

A. A large number, yes.

Q. At times your beach has been literally covered with people, has it not?

A. Well, yes.

Q. And week-ends particularly?

A. Yes, sir.

Q. And that includes not only the residents of that locality but the excursionists and picnickers?

A. Yes.

Q. Your beach is really what might be called a bungalow colony of rather high class?

A. Part of it is a bungalow colony.

I have lived in Jersey [535] on the beach about two years and ten months. Before that I lived at Long Branch. I have heard of Captain Smack. I never talked to him that I know of. [536] I patroled the beach this morning between 3 and 4 o'clock. There wasn't any heavy storm in progress at that time. There was a light rain from the southeast and east.

For Plaintiff—William E. Selby, direct.

WILLIAM E. SELBY. On *direct examination.* I live at Allenhurst, New Jersey. My official position there is Mayor of the Borough of Allenhurst. I have been Mayor since May, 1924.

Q. We offered the other day for identification through the witness Mr. Zacharias, three pictures of Allenhurst Beach on February 17, 1929. Are you familiar with that [537] condition? (Exhibiting photographs.)

A. I am familiar with the condition like that, but I don't know as I saw it on that very day.

I have had considerable experience with the garbage on the Allenhurst Beach. It has been troublesome ever since I have been Mayor. The beach is in my department and naturally I am more or less familiar with it. We have all kinds of garbage come on to our beach, such as grapefruit, oranges, potatoes, onions, dead animals, such as dogs, cats and—well, every type of garbage. It has become quite a problem in my department as to how to handle it. We have about a thousand feet of beach front. We have the lifeguards rake it up, and we have one man detailed solely to bury it. During the past season it became so great, so cumbersome, that we were unable to handle it by the burying process. We are thinking now of putting in some sort of a derrick at the north end of our beach and removing it in that way to conveyances to get it away from the beach. It left such an odor after burying [538] it that we are unable to continue that process any longer. It retards the enjoyment of the beach and the use of it by the bathers. Some days the garbage is so bad, both on the beach and in the water, that many people won't go in bathing. We think we have a first class community at Allenhurst. It is chiefly residential. They are expensive, first-class residences. They are practically all private summer homes.

Q. I show you picture number 25 (exhibiting photograph). Is this a picture of your community?

For Plaintiff—William E. Selby, cross.

A. Yes, sir.

The picture shows the beach front particularly. The building in the center is our casino, [539] The object back of it is our pool. We have a swimming pool there. This picture generally comprehends our beach front, the most part of it. There are two blocks, I think, further north that do not show on that picture. We have complaints among our people about the garbage on the beach constantly.

Our borough clerk, Miss Kline, is prepared with the official data as to resident population. [540] If something isn't done I do not see how we can expect to keep the calibre of people and keep the tone of our borough of Allenhurst as it has been. We are having constant complaints, and I believe our people will simply leave the town and go elsewhere. Bathing is the main attraction, you know. The existence of our town depends absolutely upon our water front. So much so that in order to keep our beach we have expended great sums of money. We have spent now in the neighborhood of, on our 1,000 foot frontage, close to $300,000 within the last three years. There was erosion going on, and to defeat the erosion was the purpose of the expenditure, and showing you that we do think quite a little of our beach. Bathing is our main attraction, and unless the water is [541] clean and the beaches are kept clean, I don't see that we can continue and expect our people to visit us. When there is garbage in the water, it is drained, you know, coming into the pool. Of course, people go into the pool, but last summer when the garbage was bad as it was, on some days it carried an odor even with it through the water into the pool. Some parts of it got in.

On *cross examination.* I have told all I know about the garbage now.

For Plaintiff—Charles M. Hankins, direct.

CHARLES M. HANKINS. On *direct examination.* I live at Lavallette. [542] I am the Mayor of Lavallette. This is my fourth year as Mayor. I have lived in Lavallette for twenty-one years. I was to Chadwick Fishery on the beach this morning. There is quite a lot of garbage there on the beach coming up. It was coming in this morning when I was on the beach. It consists of a little bit of everything. I couldn't exactly say what, because I wasn't very close to examine it this morning. I saw three or four grapefruits there. I will say that much, and a lot of trash. It is about the general run of garbage that comes up ordinarily. [543] I am a fisherman. I have been fishing now for eight years. I was before the mast, mate, deckhand.

I am familiar with the waters around New York Harbor and the Atlantic Ocean offshore here. I started in sailing when I was about 18, in about 1898, and sailed up to 1903. Then I was down on the coast here fishing in 1904, right along from 1903 and 1904, and I was sailing on the water again in 1905. I fished in Galilee one summer. In 1906 and 1907 I was in New York Harbor working on boats. I have seen the garbage scows going in and out. That was years ago. I wouldn't say on exactly how many occasions I have seen them dump. I have seen them dump some out at sea. I wouldn't say exactly how many times. [544] It was somewhere around 1900 or 1901 when I saw them dump. The last 25 years or so I have been employed mostly for myself. I was in the boat building business quite a few years. I do not sail at all now, only going fishing. I go fishing off to sea every day. I go out 15 or 20 miles. I have seen plenty of garbage out there. I have seen, I guess, everything imaginable in that line floating on top of the water. If we have a northerly tide, I see a great deal of it.

Q. I show you a few pictures here, and if you see any that indicate the condition that you have seen, just tell me. [545] (Exhibiting photographs.)

A. Well, I have seen more like this picture here (indicating).

Q. More like Exhibit 29?

(Discussion between counsel.)

Q. Will you continue to look at these photographs, and if you see any conditions which are similar to those that you personally have seen, will you indicate it?

[546] A. Two (indicating). One that I spoke of. I saw that in streaks (indicating). Really I couldn't identify any one picture. It consists of all kinds of vegetables, orange peels, grapefruit and different floating masses, dead dogs, cats, and stuff not only on top of the water but down on the bottom, too. There is plenty of it there. We get it in our lobster rigging. We find it off as far south as Seaside Park and as far offshore as 10 or 12 miles. Lots of times we fish up different kinds of trash that have settled to the bottom. It doesn't all stay on top. I will say it affects my fishing business pretty bad. It affects our pocketbook bad enough anyway. [547] Seven years ago I fished for about $4,000 the first summer with a small rig. Next year we fished for about eight, and it finally dwindled down to this year, we have got about two. I claim this is on account of pollution more than anything else. The fish don't come there any more. The bottom has got so it is all foul. It is sour. It is mostly caused by netherly tides. We have had a succession of five years of netherly tides, more netherly tides than southerly, consequently we get more foul water. I have seen that after a netherly tide that the lobster pots would have that much accumulation of dirt (illustrating), and I would call it pollution. I would say up to half an inch of dirt and slime, and I can't exactly tell you what it is, because I am not a chemist to tell you that part of it. [548] I have seen the stuff that floats all the way from inshore to offshore. Not exactly in one streak. I have seen it in little streaks here and then go on and there is another row of it, and a little further you will find maybe

some more of it, according to the tides. If the southerly tide stops and a netherly tide sets against it, we get rows of it. It affects the beach pretty bad in the summertime. It doesn't make much difference to me in the sailing of my boat. We have the lifeguards down there rake the garbage up and the borough employees burn it and cart it away.

Q. Do you know how much it costs you a year to take care of it?

A. I haven't kept any record of the cost of carting it away. Generally we have the lifeguards do it. They are on steady pay. [549] We encounter difficulties mostly when we have a netherly tide. It is not necessary to have a hard wind or storm or anything, but if we have a netherly tide and a little easterly air, it comes ashore. I have seen the garbage on the beach myself. I have seen it floating in the sea close at hand. I have seen names and addresses that would indicate where the garbage came from. I can't exactly recall any specific case, but during my time I have seen lots of labels with New York City on them, boxes with Fulton Market and different produce markets in New York City, Washington Market, commission dealers. I don't recall any exact specific names.

On *cross examination.* I am familiar with the fishing industry [550] along the Jersey coast in a general way. We ship some of the fish and lobsters that are caught along the Jersey coast to New York and some to Philadelphia, Baltimore and Washington. Quite a large quantity of the fish caught along the Jersey coast goes to New York City. The only fishermen that I know that ship it by boat from Jersey to New York City are lobster men. I do not know Mr. Holgarson. I ship the fish that I catch to Fulton Market, plenty of it. I ship it every day. I ship by truck. It is not my own truck. [551] We ship some in boxes and some in barrels. Those barrels are not

returned to me. We don't know where they go. The fishermen get the barrels generally from barrel contractors. Some of them come from Trenton, some from Philadelphia, some from Belmar—wherever we can get hold of them. They are second-hand barrels generally. The only barrels that I know of that come back from the City of New York are tight barrels, what we call tight fish barrels. We get some of them back. They come to the individual fisheries [552] along the Jersey coast.

C. H. ROBERTS. On *direct examination.* I live at Sea Girt, New Jersey. I am Superintendent of Public Works for the Borough of Sea Girt. I have charge of the water, sewers, streets, parks and beaches. I have charge of cleaning the beaches. We have experience with the garbage. At various times when we have easterly weather, [553] either northeast or dead east, wind of fairly high velocity, we have a large quantity of garbage that comes on the beach and we have to clean it off and cart it away. Some of it we bury; some of it we have to cart away, where the quantities are large. In 1929 we spent $242.14 that it cost us on our beach to remove garbage and that is to be added to whatever the cleaning was in front of the bathing beach. That I didn't have charge of. The life guards and help at the bathing beach took care of that. This is on the beach beyond that. They have about 300 feet that they take care of. We have no beach club. It is run by the municipality, the bathing pavilion, operated by the municipality.

Q. What did the garbage consist of that you removed?

A. Well, on February 8th I took some photographs.

Q. All right, we will offer them in evidence. That was February 8, 1929?

A. Yes, sir (Exhibiting photographs.)

Q. I show you a sheet with two photographs on it. We will have that marked as an Exhibit, the entire sheet.

For Plaintiff—C. H. Roberts, direct.

(The photographs were marked "Plaintiff's Exhibits 87, 88 and 89," and admitted in evidence.) [554] Exhibit 87 contains two pictures. I took those pictures on February 8, 1929. They were taken at various places on Sea Girt Beach. They show the condition of the garbage that was deposited on the beach during the 7th and 8th, I think it was. We had a heavy northeast storm then. Exhibit 89 contains two other pictures taken the same day at different places. Exhibit 88 shows pictures taken at different places on the beach, different locations. The day that I took those pictures I walked the whole length of our beach and I made a list of the things that I observed in the garbage on the beach, beans, peas, cabbage, egg plants, carrots, bananas, oranges, grapefruit, peppers, celery, cucumbers, dead cat, frankfurters, pork, lemons, potatoes, parsnips, dead dog, lettuce, spinach, pineapples, apples, kale, onions, turnips, dead chickens, suet, cauliflower, beets, radishes, edible pine cones, pineapples—I think I said pineapples once before—parsley, tin cans, boxes, sticks, bottles, toys and a number of electric light bulbs. [555] This occasion was just an illustration of numerous occasions. I have been in Sea Girt for 22 years. I came there as superintendent for the Sea Girt Company in 1907, August 13th, and had charge of the beaches from that time till the present time, and since that time and during that time, whenever we had northeast winds or easterly winds of any duration or velocity, invariably we had a lot of garbage on the beach, and I will say that on February 6th I was on the beach with a field glass looking up and down the beach during the storm, and about, I should judge, half a mile offshore, there were large quantities of floating material that I couldn't distinguish just exactly what it was. That was on the 7th and 8th. It was in the undertow, the same material, and so far as I could see it was all along the beach, and we had an awful quantity of it, tons of it, all over our beach.

For Plaintiff—C. H. Roberts, direct.

Our own garbage we contract for a man to cart that away from the town, take it away. It is taken back into Wall Township and dumped in a dump there. [556] When there is a very large quantity of garbage on the beach, we have to cart it away, hire teams and cart it away. And we bury some of it. I cannot tell you how many cart loads or what quantity we move at a given time. I live right on the inlet. If we have easterly weather and it brings the garbage along the beach, and it is in the undertow when the tide is out, at low water, and then the tide comes in, anything that passes the inlet goes into the inlet and distributes on our beach at Sea Girt, Inlet or Wreck Pond—commonly known as Wreck Pond—and I have seen tons of it in there. It lodges along the northerly shore, mostly, of Wreck Pond. It makes a very putrid odor. We have to go down and gather it up and cart it away. The people living along there complain of it. It is all kinds of decayed matter.

Q. I show you two papers and ask you if you know what they are? (Handing papers to the witness.)

A. Yes, I picked them up on the beach, I think it was in November.

[557] Q. Here is a letter that came with them.

A. November 25, 1929. In a lot of garbage that came up on the 23rd and 24th.

One appears to be a theatre stub of the Criterion Theatre, New York, dated the 20th of November, 1929. I picked it up on the 25th, five days after it was issued. The other is a ticket from the Italy Trading Company, Importers, 200 Spring street, New York. Picked up on the same day. I don't see any date on it. I do not know where the Criterion Theatre is. (Discussion of counsel on location of Criterion Theatre.) [558] Then in the last week in May, 1927, I picked up that bundle of material that is over there on the floor. This is the bundle just as it was picked up in May, the last week in May, 1927. The first paper on the front of it is from Ed. R. Heimer-

stein and Company, 215 West Jackson Boulevard, Chicago, addressed to Messrs. J. K. and L. S. Weiner and Co., 215 Fourth avenue, New York City. That is the same company, J. K. and L. S. Weiner.

Mr. Crowe. Suppose we say that it is a solid mass of papers about 9 inches high and probably 12 inches long, of individual sheets of paper of the usual letterhead size.

The Special Master. A hundred or more sheets.

Mr. Crowe. Easily.

Mr. Minard. Consisting of letters to or copies of letters from J. K. and L. S. Weiner & Company, 215 Fourth avenue, [559] New York.

Mr. Crowe. All of 1917.

The Special Master. The witness says he found them in 1927, didn't he?

The Witness. May, 1927, the last week in May.

Mr. Crowe. And was it wrapped up in newspapers?

The Witness. No, it was just tied up with this string here. That was the original package.

Mr. Minard. Just as we opened it.

On *cross examination.* They had been on the beach for about 24 hours, I would judge, because the garbage came up on the day before. I found it on our beach. At the time I found it the back was moist. It had come out of the water. The center of it was wet.

On *re-direct. examination.*

Q. Look here, Mr. Roberts, can you find the Criterion Theatre in the New York telephone book? (Handing telephone book to the witness.)

[560] A. Yes. Criterion Theatre, Broadway and 44th street (indicating).

Mr. Minard. I offer it in evidence.

The Special Master. You don't offer the book, you offer the ticket?

Mr. Minard. The ticket stub.

Mr. Crowe. Is there anything on this stub being offered in evidence to indicate that it came from the Criterion Theatre in New York

A. No, it says "Criterion Theatre."

Mr. Crowe. And that's all.

A. That's all.

The Italy Trading Company ticket was picked up at the beach at the same time, just a little further on, in the same mass of garbage. (The Criterion Theatre ticket stub was marked "Plaintiff's Exhibit 90," and the Italy Trading Company ticket was marked "Plaintiff's Exhibit 91," and offered in evidence.)

Q. Have you any personal acquaintance with these other two bundles or packages of papers (indicating).

A. This one I picked up. This one Mayor Durand picked up.

[561] I think they were picked up somewhere around February 8th, the same day that the photograph was made. This is a bill from a country produce place in New York. It is Northern Fruit & Produce Company, 488 Amsterdam avenue, New York. The date mark on the bill is New York, February 11, 1925. And there are other dates in the same month and the same year. [562] These sales slips, a bundle consisting of 12 sales slips. The next thing is a card; Mr. Benjamin P. Walker wishes to announce that after November 1, 1925, his office will be at 2061 Broadway, New York City. The next is Stancourt Laundry, 770 Garrison avenue, Longwood avenue, Bronx, New York City. It is a laundry ticket. The name on the bottom is Moscowitz, 1305 Morris.

Mr. Crowe. I will stipulate on the record that in the Borough of the Bronx there is a Morris avenue in the City of New York.

The next is a postcard, Wood and Selleck, Inc., Bakers, Confectioners, and Bottlers Supplies, Hudson, Duane and Thomas streets, New York, addressed to Schidko, Inc., 2839 Broadway, City. It is postmarked January 12, 1925.

There is another postcard, 2838 Broadway, the same address. There are five of those postcards. They seem to amount to receipts. They are marked "Paid" on the back. [563] This is a statement, New York, William Schedko, 2373 Broadway. The name is Recht and Rosenbaum, Incorporated, Empire Brand milk. 419 East 77th street. It was dated, marked "Paid, January 7, 1925." Others are January, 1925, Jaburg Brothers to Schedko, dated February 2, 1925: Wood and Selleck to Schedko, January 30, 1925; Wood and Selleck to Schedko, January 29, 1925; there are others of different dates, 14 of those, Wood and Selleck bills to Schedko. That is New York, March 14, 1925, William Schedko, 110th street, bought of Rothwell's Bakery, Inc., office and bakery, 429-431 East 75th street. Here is another one from the same company dated February 21, 1925. The Jaburg bills which I referred to, there are eight of them, are all dated in February, 1925. I picked them up [564] on February 8, 1929, on the beach at Sea Girt, among a lot of garbage and trash, the garbage that I enumerated on the same day. That is the same day the picture was taken.

[566] C. H. ROBERTS. *Re-direct examination* (resumed). I think I started to say that on Rock Point Beach, that is, the inlet north of Sea Girt, when the tide was coming in, there was so much garbage coming in and left on the north shore that sometimes you could not find any place to walk [567] there when we have these garbage spells. And Sea Girt is getting to be quite popular as a fishing resort for surf anglers, and on numerous times I have seen the undertow so full of garbage that the fishermen had to stop fishing. You could not keep a line in there because your line got tied up with the garbage and trash, and of course it it a detriment to Sea Girt.

And I think that is all that I had, until I got the new stuff that I picked up on the 13th of January;

there was a lot of garbage came on the catch, and on the 15th, today, I went down looking over it, and some more had come up, and I picked up those two cards, and that bundle of papers on the radiator (indicating), in and among the garbage. That bundle has not been opened. (Examining bundle.) That is the way I found it about an hour ago. These are from the Navy Yard in New York.

Q. What does it say on the top of there (indicating), by way of identification?

Mr. Crowe. Here (indicating) is one that you can read very easily—"Public Works Division." You can read it.

The Witness. "Public Works Division, Navy Yard, New York. Requisition for Services. No. 42-76-97.".

[568] There is no date on this. There is a date here (indicating), August 2, 1929? They are all tied together. They are requisitions for cylinder heads and copper pipe. All kinds of supplies. The bundle, I think, contains several hundred of those sheets.

Mr. Minard. We will not offer those in evidence. We will just refer to them.

Mr. Crowe. Are they going to be deemed as exhibits?

The Special Master. No, they will not be deemed as exhibits.

[569] The Special Master. They will be admitted for whatever they are worth, and if they are connected.

Q. Just describe the conditions on the beach when you found these (indicating).

A. There were garbage conditions all along the beach, about two-thirds of a mile long, and this morning, in going down the beach I noticed onions, and turnips, chicken cleanings, cabbage, bread, small orange peels, grapefruit, bananas, fruit peelings, and a large amount of grease, of the consistency of lard. Onions, celery, Christmas trees, apples, dead [570] chickens, pickles, sweet potatoes and squash. I also picked up this stub

here—"The Children's Shelter of Manhattan, Inc., 235 West 113th street, New York. Building Fund."

Mr. Minard: We offer this stuff in evidence.

The Witness. And found this card "John E. Durkin, 3 Spring street, Wisconsin 8497-8498-8499."

Q. Have you looked in the telephone book to find John E. Durkin?

A. I cannot find John E. Durkin.

[571] The Witness. That covers it all, I think.

Q. Now, what particular dates? I think you did testify to some particular dates when the garbage was unusually bad on the beach?

A. On February 8, 1929, August 19 and 20, 1929; also November 24 and 25, 1929.

And January 13, 1930; the 13th and 14th.

[572] *Cross examination.*

Q. When did you testify with regard to the date in November? I do not see anything in here about it.

A. I had not got to that yet.

I am testifying for the first time now about it, August 19 and 20, November 24 and 25. I do not think I mentioned that when I was on the stand before. The only date I testified to before was February 8, 1929. That is the day upon which I took pictures. Our beach has become quite popular for fishermen. And this popularity is increasing, rather than decreasing. That has been so for some time past—[573] the last few years. Prior to that time there was some fishing carried on—since I have been there. That is twenty years. But within the last two years, it has become even a more popular place for fishermen to resort to—there seemed to be more fishermen. The industry has increased, rather than decreased. It is not an industry, it is a sport. That improves the business of the locality. It has prospered and developed with this growth and popularity of the fishing. It has increased some.

For Plaintiff—Frank Durand, direct.

[574] FRANK DURAND. On *direct examination.* I live at Sea Girt. I am the Mayor and have been a little over four years. I have been connected with the municipal government since 1921. I have lived in Sea Girt since May, 1921. I am familiar with the conditions of garbage on the beach at Sea Girt. My observations concerning it are: Well, the beach at certain times becomes littered with garbage and trash and broken wood, and at times I have [575] seen dead animals there.

Q. How often has that occurred?

A. Well, it depends in a great measure on the wind conditions.

A northeast or an easterly wind will bring this litter and refuse in on the beach.

Q. To what extent do these accumulations occur?

A. Well, that also depends on the conditions. Sometimes it will pile up in a continuous streak, and all along the undertow and the upper edges of the wash, and sometimes it seems to pile up in bunches, or windrows. In a general way, it is every kind of vegetable, and particularly as you first look at it the first thing you see is the grapefruit and the orange rinds, probably because the color stands out. If you go down and examine it, you will find practically every kind of fruit and vegetable that will float, most of them decayed. The effect of the garbage on our beach and the development of our community is—it retards our development, because it makes our beaches unfit for use at certain times. [576] We are a seashore resort, and the attraction we offer to our people is our beach, and if people come to Sea Girt and find that, because of unsanitary and unhealthy conditions they cannot use the beach, they will not want to come there; the beach is littered with decaying vegetables, and these very much decayed skins and rinds—apparently they float in there with some of the other stuff; and a great deal of broken glass; bottles will float in, and after they have been on the beach sometimes they are broken

by boys, and sometimes they will, perhaps, break each other in a wash, in the undertow, and in the rough gravel.

Q. What is the principal result that you can describe upon the use of the beach?

A. Well, we find that during our summer season, when this garbage condition exists, and the litter is on the beach, and at times is in the water—of course, it is always in the water before it washes up on the beach; but there are certain days when the water adjacent to the beach seems to be literally filled, and our people cannot bathe in it; and going down to the beach to use that as their playground, they all simply have to give it up and look for some other pleasure.

[577] There is no definite stated period or cycle in which it does occur. As I say, it depends upon conditions. I have known some seasons where I do not suppose there is a week that we do not have the condition some time during the week, and then again, there may be three or four weeks when we do not have any. It interferes with the use of the beach until it is cleaned up.

Q. What effort do you make to remove it?

A. In our immediate bathing beach, where the beach would be used ordinarily every day, we require our lifeguards to clean the beach every morning. The rest of the beach we clean just as soon as possible.

[578] The resident permanent population of Sea Girt is about 500. The summer population including our hotel population, it should run between 3,000 and 3,500. The assessed valuation of the property in Sea Girt—roughly, is two and a quarter million. The figure here (indicating) is $2,271,729. The capital investment in hotels and boarding houses is probably $500,000. (Examining paper.) It is written here $500,000. The value of summer homes will run higher than that. They are included in assessed [579] valuation. We have a bathing pavilion, and one block of boardwalk. The total cost was between $45,000

and $50,000. We have built no piers. We have built, I think, seven jetties. They cost in the neighborhood of $6,000 apiece. The bathing pavilion is the only beach enterprise. It belongs to the borough. The borough owns and operates it. It is open to the public. The length of our beach frontage [580] is slightly over a mile.

Q. Have you any figures to show how much you spend to clean the beaches?

A. I have only an estimate. I have not the exact figures.

(Examining paper.) About $1,000 is estimated per year. We have no fish pounds in our community. We have a few private fishermen, who own boats and fish on shore.

Q. Can you tell us what the general effect of this situation is on your municipality? Now, you have mentioned that a moment ago, but I want to know whether you have specific instances, or any recollection of facts which indicate the effect of the garbage upon the development of the community, either at the hotels or at the boarding houses, or in the municipality generally?

A. Only in the fact that, through my official position, I get a number of complaints.

[581] A. From people during the summer. I cannot recall any names, but we do have during the summer, and have had for the past—well, in fact, ever since I have been connected with the borough—people who will complain to the borough.

That they cannot use the beach, because the refuse and the litter and the garbage, and a number of times we have had the matter brought up in our council, that, maybe, within a day or two before the meeting, there has been a storm, and the garbage has been washed in, and can't we take immediate action to clean this off, so that the people can again use the beach? And particularly from people who own ocean front property; they will complain that they have to sit there and look at it, whereas the others only run into it when they go down

to the beach for pleasure; if it lies there on the beach for 24 hours, with the nice summer sun on it, you do not have to see it to know it is there; you can smell it. The bathing beach which is used every day must be cleaned by the lifeguards every day; that is [582] part of their duty, to keep that clean. The remainder of the beach we clean under the direction of our borough superintendent, by borough labor. I have picked up papers among the garbage that would indicate where it comes from—several times.

Q. I show you a bundle of papers, and ask you if you recognize it (handing papers to witness)? Do you recognize that memorandum?

A. (Examining papers.) Yes, that is in my handwriting.

I made that within two or three days after I picked that up on the beach; this bundle of papers is the package referred to in this memorandum (indicating). It was tied up, but not with this string; it was tied up, but not all in one bundle. That package [583] laid on the beach with the other litter. A lot of bottles, and quite some garbage; a lot of small, broken wood, and some corks.

Q. We will just describe them. Now, Mayor, just tell us what that is—this package appears all to relate all to one concern in New York, does it not (handing papers to witness)?

A. (Examining papers.) This (indicating) evidently is a memorandum slip of the firm of William H. Gordon, Hardware, Cutlery and Tools, 370 7th avenue.

A. This (indicating) is a sales slip dated January 24, [584] 1928.

A. They appear to be records of salesmen.

Q. What is that pink slip?

A. This (indicating) is a form of the Standard Oil Company of New York, addressed, "New York City

For Plaintiff—Frank Durand, cross.

Department, 370 7th avenue, New York." William H. Gordon, 370 7th avenue, New York, N. Y.

This blue sheet is a form of A. B. Cross & Brother, Inc., Importers of Fine Furs, 115-117 West 7th street, New York. It is addressed to William H. Gordon. This bundle of papers appears to be all either house orders of Gordon's, or forms which have been forwarded to Gordon. This bundle contains about [585] roughly 125 or 150 papers.

Perhaps one of the easiest objects to pick up on the beach is a bottle with a label or a cork of some New York City firm. I have seen a number of those. Unfortunately, I have never saved any. I have seen other papers similar to the ones which we have here—forms and—I could not give you any definite address on them. I have seen theatre pictures of New York theatres. (Examining papers.) That looks like a bundle that was picked up on our beach. I guess the bundle was picked up the same day I [586] picked up this Gordon bundle. These were picked up—I do not recall now, it was either the same day I picked up mine, or the day before or the day after; they were turned in to my office by Mr. Roberts. The date I picked this up is stated in this memorandum (indicating) February 9, 1929.

Q. Now, over a period of years, have you frequently seen identification marks along the garbage?

A. As I say, you can find numerous articles with New York City addresses on them.

[587] On *cross examination.* I have been the Mayor of Sea Girt for four years. Since 1926. The Mayor takes office the 1st of January. During that time, as I understand the testimony of Mr. Roberts, the community has made quite rapid strides. During the summer period of time, we do not have conventions.

During the past summer, of my own personal knowledge, garbage has been on the beach about three times.

For Plaintiff—Frank Durand, cross.

Q. So that when Mr. Roberts testified to only one date, in August, you think his testimony is incorrect.

A. No, I do not.

Q. Well, how do you explain your testimony?

A. You said last year.

[588] Q. Last summer, which is 1929.

A. There was very little trouble with garbage after the 1st of July.

During the summer period, we have a few people from New York City. Most of our people are New Jersey people. There are some that commute, yes.

Q. What were these bottles that you say you saw on the [589] beach, prepared by druggists and pharmacists in New York City?

A. Well, the bottles ordinarily are empty.

And some of the bottles have labels on them, but most of them that can be identified have the name on the glass, or they have a cork with a sealing wax seal which has been stamped on, and with a druggist's name on the top of the cork. These bottles run all sizes, from a very small bottle up to a bottle of a quart size. The bottles which come in are the bottles which have a cork on them.

Q. And they are bottles of sizes that are carried in vest pockets, or coat pockets, are they not—some of them could be?

A. Some of them could be.

Q. Have you ever been present and seen any of these [590] bottles coming in from the ocean?

A. I have a number of times been bathing when bottles, trash and other litter floating in the ocean, washing up and down.

A. I have often thrown the bottles from the surf up on the beach while I was in bathing.

Q. Then you have subsequently examined these bottles?

A. Not particularly, no.

I do not know where these bottles came from. I have found bottles in the ocean and have thrown them on the beach.

Q. Yes, but that is the only time?

A. And I do not know that I particularly knew the name on that.

Q. And how often has it been your practice to throw bottles up on the beach?

A. That is the only case I remember.

Q. And how far would you be from the beach when you threw the bottle to the upper shore?

[591] A. Maybe 15 or 20 feet.

The garbage and trash which comes in within our bathing grounds, which we mark off, is cleared by the lifeguards. The remainder of the beach is taken care of by our borough superintendent. This item of expense of $1,000 covers partly compensation to the lifeguards, and the balance the expense which is paid to our borough labor for clearing the balance of the beach. They are employed at so much per hour. Their pay will run between $4 and $5 a day. They are paid only for the time they actually work.

Q. Can you tell us now how much of that $1,000 estimated expense covers the fixed charge for lifeguards during the summer bathing season, and how much is for the *per diem* employees that clean the beach?

[592] A. Well, that is only an estimate of the cost. Of course, included in your cost you must figure both the actual labor paid to men, supervision, truck hire, and operation of your truck, and other items. We pay a lifeguard for our beach for the summer season, between $25 and $35 a week. The lifeguards are there from about June 10 or 15 until September 15 or 20. That is a period of about fourteen weeks during the summer. We employ sometimes two and sometimes three; never less than two. We would have an expense for lifeguards of at least $60 a week for a period of fourteen weeks. That

is a total or an aggregate charge of approximately $840 for the summer season for lifeguard service. It will probably run higher [593] than that, because of the extra man. The lifeguards are employed on a weekly basis. They are paid whether anyone uses the beach or not.

On *re-direct examination.* The lifeguards employed are borough employees. Their duties are primarily to act as a lifeguard and protect the people while they are bathing. In addition to that primary duty, they are made responsible for the care and the cleanliness of the beach which is set aside for bathing. They have nothing to do with what we have heard of in this case as to coast guards.

On *re-cross examination.*

Q. Have not the people of Sea Girt complained about oil in [594] the water at different times?

A. We have heard of it at times, yes.

That oil comes in on our beach, in on the sand.

[595] Q. Do I understand from you that there have been from time to time complaints of oil in the water?

A. There have been.

Q. And that this gets on the soles of the feet of the bathers?

A. There have been complaints about that.

Q. There have been complaints about that condition and that condition has gone on for some years?

A. Apparently in the last two or three years it has not been serious; we have not heard anything about it.

Q. Has that anything to do with the garbage condition that you have testified to?

A. Not at all.

C. ALVA BOND, JR. [596] On *direct examination.* I live in Sea Girt. My business is real estate and insurance. I am connected with the City Government as City Clerk. I have been summering at Sea Girt for 18

or 19 years, about. I have lived there the year around since 1923. I have been in the real estate business there since 1924. I have been borough clerk since January 1, 1925. I have been there at the beaches a number of times when the condition that we were talking about has existed; as long as I have been there, there have been certain times when the beach has been littered with garbage. I would say at the high water line there have [597] been piles of garbage, trash of all sorts, such as broken crates, bottles, garbage or rinds of oranges and grapefruit, and things like that, oranges, grapefruit, turnips, potatoes and pineapples. I have seen—they would not be considered foods, but dead chickens and parts of bones of all sorts. The effect of these conditions that I have described is a cause of complaint by our residents against the condition being so bad that they cannot bathe there to full enjoyment of the ocean. Definitely I could not say how often. I would say about, at least seriously, about two or three times a summer. Over a number of years; I would say, that some years are much worse than others. Last year I only had one very serious complaint; and that was in August, I believe.

I try to be familiar with real estate conditions generally around Sea Girt. [598] I am in a position to tell whether this garbage condition on the beach has any effect upon the growth of the community. I know this, that I sold one piece of property there that the owner is dissatisfied with, because of the condition of the garbage on the beach. Some of our renters on the beach front property have complained about the condition and have said that they would not come back the next year, the following year. I am in a position to express an opinion about the general effect upon the community on that account—more or less as an expert on real estate matters. I would say this, that while it cannot be definitely stated, I would say that anything of that kind would be a hindrance to the proper or the best growth of the community. I

have never been able to identify any addresses that would indicate where the garbage came from, or any names—not definitely. I have seen things on the beach.

On *cross examination.* I have been engaged in the real estate business in Sea Girt [599] since 1924; values have rapidly risen during that period until 1926, and since then they have been rather dormant. I believe that condition is general all along the Jersey coast, with regard to the activity of the real estate market since 1926. I refer to only one sale and that happened to be a beach front sale. The name of the party who sold the house was Walter Slack from Trenton, and the purchaser was Dr. Hewlett, from East Orange. I represented Mr. Slack when he sold the property to Dr. Hewlett. I know what he paid for the property. [600] The property was sold for, I think, $21,000; it was a net $20,000 sale to the seller.

Q. And that represented a profit, did it not?

A. No, no; I would not say so. He sold the property for what he had in it exactly, because he only had one daughter, and she was married or going to get married, and he wanted to dispose of the property; he could no more use it as a summer home.

It was not a sale compelled by garbage conditions. [601] The party that bought the house complained of the garbage condition. The sale that I made was in no wise affected by garbage conditions. I said the new owner was complaining of the garbage conditions on the beach front, and was rather dissatisfied with his purchase for that reason. I have never examined the garbage. I have never walked down there and picked it up.

Garbage and trash are not the only things that affect [602] the use of our beach. I would say—well, that would be trash and floating things like that in the water.

Q. And great big logs or driftwood?

A. I have seen such, yes.

For Plaintiff—Frank C. Borden, Jr., direct.

Q. Do they come in on the beach?

A. I have seen them, yes.

Q. At any time does the oil come in?

A. I have not seen oil on the beach for seven or eight years, only what might be buried, being left there from that time. I remember years ago we did have trouble with it, before I was in business or connected in any way with the municipal government.

FRANK C. BORDEN, JR. On *direct examination.* [603] I live at Bradley Beach. My official position is Mayor. I have been Mayor since May, 1919. I have lived in Bradley Beach since April, 1914. The character of the community at Bradley Beach is recreational, I would say. We have no industries directly in Bradley Beach. Our people are composed of people who are in business; some going back and forth to New York. We have some few commuters in the winter—many mechanics, carpenters, plumbers, mechanics, and so on. The general run of necessary stores for a small town—all more or less interested in business. I do not think we have more than one or two families that are retired living there—possibly three of them. [604] I would say that the principal business of the people in Bradley Beach is the summer renting of cottages and hotels and boarding houses.

I have personally made investigations to inform myself for the purpose of testifying on the question of resident population of Bradley Beach. The last census taken showed 2,307, and it is now estimated that our winter population is about 5,000. The summer population running between 30,000 and 40,000. The assessed valuation of the property in our borough both real and personal is $8,062,764. I have the figures on the capital invested in summer hotels and boarding houses. [605] It is the assessed valuation of the property. The hotels and boarding houses amounted to $1,105,400. I have the assessed valuation separated for summer homes and homes of renters.

It is $4,133,200. I have the valuation of pleasure resorts separated. $38,000 assessed valuation. I have figures of the actual cost of boardwalks built at municipal expense. It is $75,000. We have no piers, but our jetties have cost us $47,400. [606] We purchased the entire riparian rights along our beach front from the State of New Jersey for $20,000. We have bathing pools and bathhouses. The cost is $360,000. The only beach front property that we have purchased, was at an expense of $249,500. The length is approximately 4,800 feet; this (indicating paper) says "more or less," but I think it is a little more than 4,800. I have figures to show what amounts are appropriated, or paid, or both, for garbage removal per year. In so far as it is because of the excessive garbage condition we had on our beach, the board included $1,000 in the beach front budget for the years 1928 and 1929. In 1928 there was approximately $800 spent for excess work on that garbage situation, and in 1929 it may be a little more than that; as far as I know it amounted to $877.73; [607] that is the last figure I have. I have a statement of the capital invested in fish pounds; we have made an investigation, and that amounts to $50,000. The actual catch of fish in these pounds I am told is approximately $60,000. They have as a rule about 25 men employed.

Q. Now, I want you to describe to what extent the prosperity of your community depends upon the usable condition of your beaches?

A. The only thing that we have to sell to the public, to attract them to Bradley Beach, is the Atlantic Ocean and our boardwalk and the sand to sit upon, and that is what brings the people there. So the only thing we have to attract them is our ocean front. If we were located in Hamilton, back in the country four miles, we would have nothing to attract the people down to spend the summer. It is the ocean front that brings them; we have not anything else.

Of course, the garbage condition is a detriment, it cannot help but be a detriment to our borough. It interferes [608] with the pleasures of our people. With garbage spread upon the sands during the summer season, when the bathing is at its height, and that is what people come there for—it is not likely, and in fact, they will not go in with that garbage there in the sand or the ocean, because it interferes with their pleasures, and when it interferes with their pleasures, it takes away from the attraction of Bradley Beach.

Q. How much garbage do you have at Bradley Beach?

A. Whenever that garbage comes ashore in the summer, we make every effort to put as many men as possible to work, so that they will not be in the way of each other—to get it off the beach front as quickly as possible. We have sometimes not been able to move it as fast as we would like to, and I have known the time when the scent has been terrific, because we could not get it off.

I have made personal inspection of the garbage on the beach. Every time the garbage gets on the shore, somebody notifies me and I go down and see it. We have just had another load come in, and I walked down on the beach and saw it myself, yesterday. [609] The condition yesterday was terrible. Of couse, I have pictures that were taken on Monday. I have them in my pocket. They were taken by Leon McLaughlin.

Q. What does this garbage consist of, principally?

A. I thought I would be asked that question, and I did not write it down, but I saw apples, parsnips, carrots, parsley tops, pineapples, grapefruit skins, orange skins; honeydew melon rinds—I expect many other things, but I just do not recall.

Q. What were the particularly offensive articles that you saw?

A. Now, I did not walk this length of beach front. The part that I looked at—you may walk down any place on

the beach, and that is what I did. I took my car and went down to the beach and looked at the beach and saw what it was. I did not walk up and down. I was told that there were dead [610] chickens; there were not any at the particular place I was, so that I did not see any. I have seen identification marks on articles to indicate where they came from but I did not pick them up myself. I do not remember what addresses and names there were; they have simply "New York." I did not pay any particular attention to that. I did yesterday pick up a couple of blue bottles, but I found no identification on them, and I dropped them again. I can refer to a particular time this season or last summer when the garbage was bad. We have had a storm about the 1st of August last year, and at that time we had the garbage situation. I probably would not recall that, but for the fact that we were just about to put what we call our "tag system" into effect, and that was to go into effect the 1st of August. But really it did not go into effect on that date, because there was nobody to go in, and nothing to put into effect that day. But that was tag day.

We have not room on our beach front, even with a mile frontage, to take care of our summer people—summer [611] visitors and the day visitors who come for the bathing, and bring lunches, and so on; we had not room for them. So that we had to stop lunch parties on our beach. And they were not admitted without the tag. That is what I mean by our tag system. That system went into effect last summer—the 1st of August. The outside day visitors have been excluded since that time from our beach insofar as free bathing, or any lunch box parties on the beach are concerned. They had a certain right and liberty to go to the public bathhouse and hire a bathroom and go bathing.

For Plaintiff—Joseph R. Megill, direct.

JOSEPH R. MEGILL. On *direct examination.* [612] I live at Bradley Beach. I am a lawyer. I have lived there since September, 1916. I am borough solicitor. I am quite familiar with the garbage conditions on the beach at Bradley Beach. I have observed it from time to time. I will give a statement of my observations, the period that they cover, and the nature and extent of it. For the last four or five years of it, and right during the summer season, I have observed it. In the wintertime not so much, because I do not have occasion to go to the beach. But during the summer, maybe two or three times in the summer, right after a heavy storm, there would be a great deal of garbage cast up on the beach, and that garbage would consist of grapefruit peelings, orange peelings, apples, potatoes, tin cans, bottles, celery, and all kinds of foodstuffs and refuse that would float. And Sunday I was [613] driving on Ocean avenue, through Avon, and I noticed a great accumulation of the same kind of garbage and refuse on the Avon beach front. I could not see it at Bradley Beach at that time, because Ocean avenue is quite some distance from the boardwalk, and you cannot observe the beach condition from the road as you can at Avon. Yesterday I went on the beach front and on the beach, and I found the same condition as at Avon on Sunday. I went down on the sand and there was garbage and trash and refuse the entire length of the beach front, some fifteen feet wide, and probably twenty feet or so from the boardwalk. Yesterday I observed the same character of articles that I did before, orange peelings, grapefruit peelings, banana peelings, bottles, tin cans, small sticks—all sorts of things. I did not observe any animal matter; it was all vegetables—something which would float. Meats would not float, and naturally would not be cast up very often. I did not see any meat or anything like that. I did not see any identification marks, names of places. I did on cans. They were marked or bearing names of concerns with [614] New York addresses,

For Plaintiff—Joseph R. Megill, cross.

but like the bottles there were no labels on them. Being in the water, they had washed off, and there was no way to identify the bottles.

This garbage condition has existed at Bradley Beach four or five years, to my own knowledge. It has been called to my attention. Before that, I do not remember much about it. It causes much complaint in the community. When the garbage is on the beach, you will hear everybody talking about it, summer visitors as well as local residents, because it is impossible to use the beach for bathing during that period. Last summer at one time the condition was just the same as it is today, and it would be utterly impossible, almost, for anyone to use the beach front for bathing purposes with a condition like it is now. You could not sit down; you could not walk on the beach; you would be in garbage and tin cans and broken bottles all the time.

It affects the community in this way: That Bradley Beach is a residential resort community, and people who come to Bradley Beach in the summer and rent cottages come there because they can make use of the beach for bathing purposes. People who come there like to bathe, and they like [615] to walk the boardwalk, and when they cannot do those things they will not come to Bradley Beach. Some people have found such conditions there and have not come back. Some people have sold their properties and moved elsewhere on account of the beach conditions.

On *cross examination.* This condition that I have referred to always follows a heavy storm. I have always observed it after a storm. I would not allow bathing at our beach when the sea is running as high and as rough as that sea is running out there now (pointing to the beach and ocean). In the wintertime, maybe one or two people go in bathing. The only time that garbage would affect bathing would be during the summer season. We would

not allow bathing on our beach when the sea is running as rough as it is now. [616] I do not recall but one storm when the refuse came in. That was some time in the early part of August.

Q. Now, with this vegetable matter that you have been describing, there is always a large quantity of logs and driftwood?

A. No, not a large quantity; there is considerable small driftwood, which is possibly small boxes broken up—nothing of any size. Once in a great while a log might come in, but that is not common at all.

It is all together in a window, you might say, about 10 to 15 feet wide. I do not know whether or not the driftwood collects garbage on the surface of the waters. Our community has had a very rapid development within the past five years. Bradley Beach has grown quite some. [617] Bradley Beach, most of its growth occurred prior to five years ago. I would say there has not been any particular growth in Bradley Beach for the last three years, anyway. There has been a recession in values.

Q. Upon what do you base that conclusion?

A. It is rather hard to tell. The fact that conditions on the beach are bad has some effect on it, or possibly conditions generally have some effect on it.

Q. What is the data upon which you base the statement that there has been a recession in value?

A. I have not any particular data, but my business brings me in contact with real estate transactions, and I know that property in Bradley Beach would not bring the same price that it would five years ago.

That is a condition peculiar to the seashore. It is not peculiar to Bradley Beach. [618] My practice is not confined to real estate or particularly concerned with real estate. I did not have any particular number of sales in mind, because I cannot remember. I passed titles in Bradley Beach frequently—three or four times a year, and sometimes a greater number. I have no basis for the

statement that there has been a recession in values beyond your surmise. Beyond what I know myself. I know that you cannot get as much for property in Bradley Beach as you could three years ago. I know that.

Q. And that is not due to any general condition of the real estate market affecting purchases generally?

A. That has some effect but all of those things are to be taken into consideration. But that is a factor.

I never saw oil coming onto the beach front. I never heard any complaints about it. [619] My official connection with the Bradley Beach corporation is borough solicitor. I do not remember when I was appointed. I would say about five years ago.

On *re-direct examination.* I said something about having garbage only when there is a storm. When the wind and the waves subside, the garbage is still there. The garbage has not increased the values in Bradley Beach.

[620] LEON McLAUGHLIN. On *direct examination.* I live at Bradley Beach. My business is letter carrier. I have lived at Bradley Beach twenty years. I am familiar with the conditions on the beach. I have taken photographs of those conditions.

Q. I show you some photographs and ask you if you can tell me whether you took these pictures, and if so, when (handing photographs to witness)?

A. (Examining photographs.) Group (indicating) was taken February 11, 1929.

[621] I took them. They show conditions as they existed on that date. These were taken February, 1927. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 93" to "Complainant's Exhibit No. 101," inclusive.) We have now a group taken February 7, 1929. That is the date marked on them. (Examining pictures.) (The photographs referred to were received in evidence and

marked, respectively, "Complainant's Exhibit No. 102" to "Complainant's Exhibit No. 107" inclusive.) We have another group, marked January 13, 1930. Those were taken by me [622] on that day.

Mr. Minard. I offer in evidence photographs taken January 13, 1930.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 108" to "Complainant's Exhibit No. 112," inclusive.) Exhibit No. 92, dated February 7, 1929, shows the garbage on the beach that was removed by horse and wagon to the paved street and dumped, and then it was loaded on motor trucks and driven off. It consisted of orange peels, melon skins, grapefruit, pineapple, dead chickens, animals, wings of fowl and trash in general—bottles, sticks—that is all that I [623] can remember now.

Exhibit No. 94, dated February 11, 1929, is a close-up picture of the piled-up garbage where it was piled in the street before the trucks had carted it away. It was brought from the beach. It consisted of the same material that I have described. Exhibit No. 95, dated February 11, 1929, shows the garbage as it lay on the beach as it was placed there by the water, before it was touched.

Q. What did that consist of?

A. The same as the other.

Exhibit No. 96, dated February 7, 1929, shows a portion of the beach with the garbage on the beach, and one of our bathing pavilions.

Exhibit No. 97, February 7, 1929 [624] shows a section of the beach with the garbage running from the low water up to the high water line.

Exhibit No. 98, February 7, 1929, is a section of the beach taken from the boardwalk, showing part of the boardwalk and one of our pavilions and the garbage on the beach. It runs all the way from the low water mark up on the boardwalk. Exhibit No. 99 shows the horses and wagons carting the garbage from the beach.

For Plaintiff—Leon McLaughlin, direct.

That is the same material as I have described. Exhibit No. 100, February 7, 1929, is another section of the beach, showing the garbage as it was washed up by the waves. Exhibit No. 101, February 7, 1929, is another section of the beach, showing the garbage on the beach. Exhibit 102, January 13, 1930, is a picture of the garbage on the beach, taken from under the boardwalk, where it had been washed up by the waves. [625] Washed up under the boardwalk. Exhibit 103, January 13, 1930, shows a section of our beach front, showing the water and the beach, taken from under the boardwalk. Exhibit 104, taken January 13, 1930, is taken from under one of the jetties, under the boardwalk. showing the garbage in the water and also on the beach. Exhibit No. 105 is taken from the boardwalk, looking toward the water, showing the garbage on the beach and also on the water. Exhibit 106, marked January 13, 1930, is taken from under the boardwalk, showing the garbage where it had been washed up by the waves. Exhibit No. 107, taken January 13, 1930, is taken from the beach, showing garbage on the beach and in the water. Exhibit No. 112, dated January 13, 1930, is a section of the beach looking under the boardwalk, showing the garbage where it had been washed up by [626] windrows. Exhibit No. 111 shows a section of the beach under the boardwalk, showing where the garbage had been washed up. Exhibit No. 110, taken January 13, 1930, is a section of the beach taken from the ocean—not necessarily, not from the ocean, but toward the ocean, looking up toward the boardwalk, showing the garbage on the beach under the walk. Exhibit No. 109, taken January 13, 1930, shows a section of the beach near the boardwalk, showing the garbage. Exhibit No. 108 shows the garbage piled up on the beach under the boardwalk. That is the way the waves left it. I do not think it had been touched yet. So that we can go down to the beach and see the condition that those photo-

graphs describe. If the ocean has not taken it back out. I have no connection with the beach. [627] I go there frequently.

Q. What is the effect of these conditions that you have described upon the beach and the use of it?

A. Well, during the summer season I go bathing every day that it is possible to go, and I have gone down a good many days when I would not go in myself and would not even allow my family on the beach.

Q. What was the trouble?

A. Garbage, trash—

Q. What was its condition?

A. Well, some of it, grapefruit, orange peelings, is very bad; some of it is in a decayed state.

I have examined articles once or twice to see whether any names and addresses were on them. The only one I can recall particularly was a medicine box from a New York druggist, with a 142nd street address on it. I have forgotten what the address was. I do not remember the name on it. No, I do not. I do not operate a boat. [628] I go out quite a bit in a boat. I have encountered garbage at sea. It resembled the pictures that I have here (indicating); probably is was not as compact. When I was out fishing, we have frequently had to slow our boat down considerably to get through it.

Q. What areas did it cover?

A. Sometimes, I would say, an acre or two; other times it was a narrow strip a quarter of a mile long. I have encountered it as far out as a mile and a half. We had to run carefully through it; if we did not, some of the timbers would be likely to run through the boat; some of it would have broken the propeller, and we would have been stranded.

Q. Did the consistency of the material at sea differ in any respect from that which you found on the shore?

A. No.

For Plaintiff—Leon McLaughlin, cross.

I never examined any check stubs, or anything among the garbage that would identify the source of it. I do not know what names or addresses were on [629] them. I have not been out where the garbage is dumped—not when they were dumping. I have seen crates, but I could not recall the addresses on them.

On *cross examination.* I am employed at Bradley Beach; have been so employed since 1918.

Q. Did you take these photographs which have just been offered in evidence of your own volition, or were you directed to take them?

A. Some of them. I think the ones that you have I took of my own free will, just for the sake of taking them.

Q. Will you pick out those photographs that you took [630] on your own initiative?

A. (Examining photographs.) All of those. I have had others made since.

Q. Have you examined these photographs and can you tell me whether or not some of them are not different views of the same garbage or materials on the beach (handing photographs to witness)?

A. (Examining photographs.) Why, yes, different views of the same material.

Q. These photographs, how many different dates?

One in December, 1929, one in January, 1930, and one in January, 1929. The dates are on them.

Q. This group of photographs were taken at three different times. The 7th of February, the 11th of February and [631] January 13, 1930.

At the time I took these photographs, the materials were already on the beach—some of them. Some were still in the water. The materials shown in this picture (indicating) as being on the beach were on the beach before I arrived to take the picture.

For Plaintiff—Leon McLaughlin, cross.

Q. Now, will you examine Complainant's Exhibit No. 105, and tell me what there is in that picture that you would describe as being garbage (handing photograph to witness)?

A. (Examining photograph.) Well, when I took that picture, this here (indicating) and this windrow over here (indicating) consisted of orange peels, melon peels, vegetables, and some driftwood.

That picture correctly represents the conditions that existed on the beach at the time I took it.

Q. Now, will you tell me wherein you saw any vegetables in and among those objects shown in that picture (handing picture to witness)?

A. (Examining picture.) I saw vegetable matter in [632] there (indicating). I described it before.

Q. Can you look at the picture and describe it again?

A. Sure (examining picture). I cannot pick out each individual piece and describe it. I can give you the general consistency of the garbage on the beach at that spot.

Q. Does that picture show that that garbage is there —what this garbage is?

A. Clearly, no. This is in reference to Complainant's Exhibit No. 105.

Q. Now, will you examine Complainant's Exhibit No. 97, and tell me whether that picture shows clearly that the materials therein shown on the beach are garbage or something else?

A. (Examining photograph.) No, it does not.

Q. Now, will you examine Complainant's Exhibit No. 98, and tell me whether or not that picture shows that the materials, whatever they are, on the beach, are garbage or something else?

A. (Examining photograph.) No.

[633] GEORGE W. SMITH. [634] On *direct examination.* I live at Bradley Beach. My business is general street work—laborer. I have to do with cleaning the beaches. When I have orders to. I have cleaned up the beaches after garbage has accumulated—a week at a time. I have done that in 1926, 1927 and 1928—right along every season.

Q. Now, can you describe the conditions as you have found them there on these occasions?

A. Different occasions. Sometimes I have seen it when the men had to go to work and start the stuff away so that I could get the horses and wagon through, it was so thick.

The stuff was apples, turnips, potatoes, grapefruit, lemons, onions—all decayed stuff in the vegetable line. I have seen articles in the garbage [635] that would have a name or address on them. In 1927, I picked up four bottles sent out of New York with postal cards in them. I knew what addresses were on the cards. I did at that time. They were bottles that had been floated with return cards in them—a sort of picture card. This was a small bottle, a full ounce bottle, just about the length of a postal card. I mean the height of a postal card; that is what it was printed on, I judge. I have seen other garbage that had names or addresses in it; billheads or posters. [636] (Examining material.) That is the stuff. I picked this up Sunday morning, January 12, between 11 and 12 o'clock.

Mr. Minard. That does not show much. It shows a Bronx, New York, address.

We have here a ticket for the Elks' Club Ball in Brooklyn, New York, Saturday evening, January 4. It has a stamp on the back of it.

Here is a ticket for the Bauernball, January 8, 1930. With it is a card of Graham Brothers, 660 Hudson street, New York City.

For Plaintiff—George W. Smith, direct.

Here is a blank billhead of somebody with some figures on the back. The only thing that appears is the word "Avenue, Bronx, New York."

Here we have a Bronx Home Laundry service stub.

Here is a Borden milk bottle cap, 443 West 127th street.

Here is a card of Mr. and Mrs. F. Strusinsky and family. It says, "Wishing You a Happy and Prosperous New Year, 1910 Vermont avenue, Bronx, New York."

Here is another Borden's milk bottle cap, with 443 West 127th street on it.

I offer these milk bottle caps in evidence.

The articles referred to were [637] received in evidence and marked, respectively, "Complainant's Exhibit No. 113" and "Complainant's Exhibit No. 114.")

Mr. Minard. Here is a bundle of stubs marked "Requisition Order," with the numbers on it, "Executive Department, Italian Modern Stores Corporation, 261 Third avenue, New York."

The Witness. None of these others are specially marked.

Q. I see here is one from Sheffield Farms. It is a carton that is labeled a pint of milk, 1045 Webster avenue, Bronx, New York City.

These others have not got any identification marks on them.

A. No, they have not.

Mr. Crowe. We will concede that there is located in the City of New York a pasteurization plant operated by Bordens, 443 West 127th street, New York City.

[638] The condition of the beach where I got these things was all full of vegetables of all sorts—apples, potatoes, cucumbers; one chicken ready to fall apart—got knocked around. This chicken had his feathers on, too. It was not no butcher's chicken. Some old junk that was throwed out of a crate. I had to cart it out with horses. About the rate of four loads to the hour

for one week, steady. That was around in 1927, I think. And last spring, I think it was February or March, I had to do also the same thing—bottles of all sorts, tin cans, small driftwood. I have to do that during the season whenever there is a northeast wind. At other times I have noticed articles with identification names or addresses on them. I never bothered to pick them up. The addresses were all New York. [639] I saw the material in the water, out in the undertow and up on the beach; it rolls in there, and every time a wave comes in, it drives it up a little further, and it lays up on the beach and underneath the boardwalk.

Q. What is the condition of the material so far as decay or preservation is concerned?

A. Sour; it stinks.

There is difficulty in gathering it to remove it; when you leave there and get off the beach at noontime or at nighttime, you do not know what you have been into; it gets into your clothes. It has been laying in the sun. As soon as the sun hits it, it decays and gets sticky or slippery, and you slide along as you would on jelly; your feet come right from under you. I have some more exhibits that I picked up. [640] There is a box outside, if you please. (Examining box.) That is the box.

Q. Was this board (indicating) in among it?

A. Out in the trash, yes, down on the beach.

J. What does that say on the board? Just read it.

A. My glasses are not strong enough to read it.

Q. I will read it. (Reading.) "Two dozen 2½ size Epicure Brand Yellow Cling Peaches. Distributors, Sunnyrow & Frills, New York." Where did you find that?

A. On the Bradley Beach beach front this morning.

Q. And the box here (indicating)?

A. Same thing.

Q. This box is marked "Manhattan Refreshment Company, 142 2nd avenue, New York, N. Y." The same name

is on each end and on the other side. That you found this morning?

A. Yes.

On *cross examination.* My official position is general street worker. [641] Looking at Complainant's Exhibits 113 and 114, the milk bottle paper caps, I observed those on the beach and picked them Sunday morning, January 12, between 11 and 12 o'clock. They came in on Saturday night. There was not nothing on the beach Saturday afternoon. They came in on high tide during Saturday night and Sunday morning —northeast wind. The tide was high Saturday night or Sunday morning. I should judge somewhere around about 11 or 12 o'clock at midnight. I was working there, and the tide was not high enough at the time I left and I should judge it was around 11 or 12 o'clock at night. And the wind commenced to start up that Saturday night. It commenced to start up Saturday afternoon, a northeaster. That is Saturday, January 11. The wind started to blow up Saturday night from the northeast. And between 11 and 12 o'clock on Sunday morning [642] I found these (indicating) on the beach.

Q. Do you know whether or not there is a Borden's concern for distribution of milk by the bottle here in New Jersey?

A. I do not. There is a Borden's Milk Company here in Asbury Park.

Q. And none there?

A. Not at Bradley Beach.

I do not know whether or not they distribute milk to Bradley Beach from Asbury Park. These milk bottle caps when I picked them up were wet and softer; they were wet; I took them and dried them out. They were flat—as you see them there; flat; about that shape (indicating, and flattening cap out). They were about like

that (indicating). It is possible that they were flat. They were knocked about with tin cans and blocks of wood; it is the same way with this [643] (indicating); they would be knocking against pieces of the wood, and tin cans, and on the tin cans the labels were knocked off; those would be destroyed; but these (indicating) could stand being knocked around; they were soft; that is a sort of wax paper anyhow. It will stand the water. If you take common paper, it would all fall to pieces; take how this wrinkles up and breaks up after it has been wet.

WILLIAM FITZGERALD. On *direct examination.* I live at Bradley Beach. My business is street department. My duties are to take care of the streets, do all general street [644] work. I have work on the beach when there is stuff there in the summertime, keeping the beach clean. I have been engaged by the borough for the last five years, about. I have been familiar with the condition on the beaches; about 17 or 18 years is my career in Bradley Beach. I know about the garbage on the beach. I know there is quite a lot of it there. I know in February of 1928 I carted off—that is, the horses carted to me and I carted with a motor truck back out in the country—my own recollection was about once, on to about 45 or 50 loads of stuff into a Ford automobile. That was in February, 1929. It occurs every time we have a sort of a northeast [645] storm; sometimes it is worse than others. This garbage consists of dead animals, such as dogs, cats and chickens, and fruit, orange peels, grapefruit, old squashes, and in general, stuff and bottles and things like that. It is kind of decayed from the water, and they are sort of decaying; and it is in very bad condition, such as the animals. I have seen some time when we would take the garbage up by forks, when we would not be able to get the animals on the fork, that is, all of them. They were so much decayed; sometimes we

had to pick them up with a shovel, when we could not do it with a fork. I have noticed articles that gave names and addresses. I have seen the names, but I have never bothered to notice it. This last time I have seen labels on the bottles, and sometimes they have been stamped with the names of New York concerns. I have seen bottle caps and boards. I noticed a board this morning, but I did not think there would be any use bringing [646] it up. It was marked "Standard Oil Company of New York." That might be anywhere.

Q. I show you an envelope, and ask you if that shows anything that you recognize (handing paper to witness)?

A. This is the stuff I picked up on the beach yesterday, around 1:30 o'clock, such as bottle caps.

Mr. Minard. This is a Sheffield Farms bottle cap, 527 West 125th street, N. Y. C.

Here is another one, Trinity Dairy Company, 4951 Downing street, New York.

Here is another Sheffield Farms milk bottle cap, 527 West 125th street, New York City.

Here is another of Timmer's Luncheonette, candies, etc., 498 Sixth avenue; phone Chelsea 4965.

Here is a Borden cap, 460 West 28th street.

And here is a Model Dairy Company cap, 19th street and Avenue B, 246 Eighth avenue, New York City.

Here is one from the Sunshine Farms, 543 to 547 West 25th street, New York City.

[647] Here is another Sheffield Farms, 632 West 125th street.

Here is another card, the New Castle Club, 32 East 12th street, University Place, telephone Stuyvesant 9384.

I do not know whether there is any doubt about these things being New York City addresses or not. These (indicating) are going to be particularly unhandy to duplicate for the record.

[648] Q. Have you ever found any other papers with an identification mark on them?

For Plaintiff—William Fitzgerald, cross—re-direct.

A. No, I never have picked any up. I have seen them, but I have never bothered with them.

Q. What addresses have you seen on them?

A. Well, it was New York City, but I could not recall. That is, at one time I picked up a large volume of cancelled checks from a New York bank. I have had them up in my yard. I thought I could find them around there, but I guess they got throwed out with the rest of our stuff on the dump. It was a New York bank, I cannot recall which it was, but it was on some big brokerage firm. But there were very large amounts on them. At that time we were fooling about the large amount, and that we had quite a large amount of those, and I have seen them in the yard, but I cannot seem to locate them now.

On *cross examination.*

Q. Do you know whether or not the drawer of the check, the person who signed the check, was a resident of the City of New York?

A. On the end it had the brokerage firm's name up on the stub end, and then the New York bank was up on the top, right across the whole check; that was the reason I know it [649] was a big brokerage house.

It was on a New York bank. I do not know whether the person who drew the check lived in New York. I could not say that. I know it was this brokerage house. I only knew it was a New York bank and the name on the stub was a New York brokerage house. There are branches of New York brokerage houses out here in Asbury Park, I presume there are.

They were on the beach, but right at the water line. [650] I assumed that they came in from the water. I have been employed in this capacity close to five years.

On *re-direct examination.*

Q. Do you know whether or not this brokerage house whose name is on these checks has any branches along the shore?

For Plaintiff—John G. Gruetzner, direct.

A. I don't recall; I don't think they have. I do not know.

JOHN G. GRUETZNER. [651] On *direct examination.* I live at Asbury Park. I am the superintendent of Asbury Park.

Q. I show you some pictures labeled Seaside Heights, New Jersey, December 13, 1929, Cole & Co., and they are numbered 9319-A, 9322-A, 9323-A and 9324-A. I want these identified. I am willing to offer them in evidence, but I do not know that it would be well to do so, as I have photographs ready to offer in evidence when the photographer comes. Can these be identified, so that we can offer the others when the time comes?

(The photographs referred to were marked, respectively, "Complainant's Exhibit for identification, No. 115 to No. 118," inclusive.)

I was present when these photographs were taken. They were taken on the dates shown on there [652] by Cole, photographer. The name of the operator of the camera is Mr. Stickler. He has already testified in this case, has he not? These pictures show the conditions as I saw them there that day.

No. 115 for identification. That picture shows my foreman, Mr. Charles Keyler. And this is myself (indicating). I made at the time and on the spot a list of the articles which I saw in that collection of garbage (examining paper). That is the list I prepared of articles that I saw. [653] One is marked Seaside Park. I was there the same day. This (indicating) is marked Seaside Heights. There is a note on here covering Seaside Heights.

(The memorandum referred to was received in evidence and marked "Complainant's Exhibit No. 119.")

Exhibit 115 for identification shows a lot of garbage there that came in. Different classes of garbage.

For Plaintiff—John G. Gruetzner, direct.

Exhibit for identification No. 115, shows trash from the point we stood, in about the middle of Seaside Heights. And this (indicating) shows the view from the boardwalk out—the extent of that garbage on the beach.

No. 117 [**654**] shows the beach north from the point we stood. This (indicating) is dead chickens. In the lower corner. And then you had got your garbage here (indicating). I will state that practically 90% of that beach was garbage, about 10% was driftwood; driftwood means broken wood.

Identification No. 118 shows the same picture north. In the same condition.

I have more pictures on this subject. I have Seaside Park. I took those pictures previous to those Seaside Heights pictures. Those pictures I took personally myself.

[**655**] (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 120" to "Complainant's Exhibit No. 124" inclusive.)

Exhibit 120 shows the beach at Seaside Park on December 13, 1929. That material consisted mostly of driftwood and bottles—all kinds of tin cans—toys. I have a list there. Exhibit 119 is a complete list of those articles in Seaside Park. That list is already in evidence. Exhibit 119 describes the articles which I found as shown by Exhibits 120 to 124, both inclusive. [**656**] They were all taken at Seaside Park, December 13, 1929. They fairly describe the conditions existing there at the time. They were taken right there on the spot at the time. I picked up some of the articles. I have an assortment of them here. They were found at Seaside Park. That is the way I found them (indicating package), except that they were wet.

Mr. Minard. That is, "Why Does This Girl Leave Home, Friday Night, Saturday Night and Sunday After-

noon." And it seems to be a group of pictures from the Academy Club, Broadway and 207th street, New York. [657] There are approximately 100 of them in there. They are right on that list of material that I found, Exhibit 119. There are two tickets from a hat cleaning parlor. There is an address on it—420 East 149th street, New York City. No date. I put the date when I found it, December 13, 1929. It says, No. 711, or whatever it is. I found oyster cups, "Fulton Market, New York City." Lester & Toner, Inc., Fulton Market, New York City. I found three of them. Wax paper cartons or oyster containers. I put the date on the bottom. [658] We have the usual assortment of milk bottle tops. There is a large Christmas seal there (indicating). Here is a collection of Borden milk bottle caps there with some address on Tenth avenue, New York City; some of them with other pasteurization stations on them. I think we have enough of those milk bottle caps in for identification; some of them have the same addresses and some have different addresses on them.

Mr. Crowe. This (indicating) is Long Island City.

[659] I have here (indicating) a sponge. That does not show any address. I have got everything in there (indicating). That covers everything.

On *cross examination.* [660]

A. Seaside Heights is about ten miles to the south of Asbury Park. Seaside Park adjoins Seaside Heights. It is no part of Asbury Park.

A. I am an employee of Asbury Park.

Q. How did you come to take these pictures at Seaside Park and take these pictures at Seaside Heights?

A. Well, on the last morning I heard the coast guard testifying that the garbage was gathered down there at Seaside Park, the trash. And I started immediately out to verify the statement of my own motion. No one directed me to do it.

These pictures were taken at two o'clock in the afternoon. The testimony of that Coast Guard was given some time between ten and twelve o'clock. [661] Those were the conditions I found existing within two hours after his testimony. That garbage was ankle deep.

Q. But when he testified that it was knee deep, would you say that he exaggerated?

A. I would say here is what he meant—No. 120-124. This (indicating) is at least two feet high here, this trash; every bit of two feet. And he also testified that he had to move the stuff so that he could launch the boat, and here (indicating) is the men moving it here (indicating Exhibit 121).

Q. What exhibit number is that?

Q. Now, looking at that material shown on Complainant's Exhibit No. 121, which you described as being in height about two feet, what is the greater part of the material that composes that pile?

A. Boxwood. Now, at Seaside Park, I found an area—

Q. Just a minute. Are you sure that this material is [662] boxwood?

A. It is boxwood, tin cans and everything I referred to here; everything goes in that I find enumerated on this sheet (indicating).

There is more wood than tin cans. And more wood than any other kind of material. The wood shown there (indicating) is some two by fours, some four by fours and other heavy logs. At Seaside Park the materials on the beach were about 10%, what is commonly known as garbage and 90% of trash, including wood.

[663] GEORGE W. BOSTWICK. On *direct examination.* I live at Bradley Beach. My business is health inspector. My duties are to look after the health of the town. I have been in that capacity about 25 years. I am familiar with the condition of garbage on the beaches. At different periods when we get a northeast storm, there is

garbage that comes up on the beach. It consists of [664] all kinds of garbage—chickens, dead chickens, cats and vegetables, decayed vegetables, orange peeling and bananas, grapefruit, potatoes.

The only official duty is that I ought to try to get it off the beach; that they expect the Board of Health to see that is cleared up. It would constitute a menace to the health of the community if it was not taken away right away. Decayed material, you know, is liable to create fever—different fevers. I have had complaints about the condition of the beach, hundreds of them. As soon as it comes on there, they think the Board of Health ought to take it away; they blame the Board of Health for having it on there. As soon as it gets on the beach, the people that live down there will come up and say, "You are the Board of Health, and so why don't you get that off of there?" They do not give me no time to get it off; they go down to the [665] beach and get it off. We do not have to place any restriction on bathing while it is there; they get it cleaned off as soon as it can be. Of course, when we had it right in the summer, it does not take much time to get it off. But that one year they had it take one whole week, but then it was cold weather and there was no bathing at that time. I could not tell you how often it occurs during the summer. Every time we get a storm from the northeast. I have saw articles with the names on them, but I never paid no attention to them.

Q. Do you know what place was named on them?

A. Well, New York; that is all; I did not pay no attention to them.

On *cross examination.* The duties of a health inspector: all complaints to [666] look after the complaints and contagious diseases; to quarantine houses, if there is any menace to health or anything of that kind, you are supposed to go there and look at it; that is the duties

of the inspector. I have been an inspector 25 years in Bradley Beach. My duties extend throughout the whole municipality and are not confined to the beach; the whole thing—plumbing—and overflowing cesspools and such things as that would come under my jurisdiction and dead animals deposited in the streets, and that I have to see taken away; and the removal of garbage generally from the homes and hotels.

Q. Where does Bradley Beach dispose of its garbage?

A. Why, a man takes it out of town—the garbage, he takes it out in the country somewhere; he has a place; they have no incinerator; he buries it, and feeds hogs with [667] it.

A. He collects it from the houses, carries it out in his wagons to a dump.

Q. These articles that you refer to as having New York addresses on them—by that you mean they had labels showing that they were distributed from New York manufacturing or distributing houses?

A. Why, yes—and bottles with New York addresses. But I never paid much attention to that; because we have always figured where the stuff came from, and never bothered.

Q. You have always assumed that?

A. I have always assumed that the stuff came from New York.

[669] DR. ARTHUR KENNETH GRAHAM. On *direct examination.* Sea Girt is my legal residence, and I am in Philadelphia. I am chemical engineer and member of the faculty of the University of Pennsylvania. I spend the larger part of the summer at Sea Girt, and week-ends in the spring and fall. I have been down there every summer in my life, and I am 33 years old. [670] I have lived one block from the beach; at present my home is two blocks from the beach. I am familiar with the conditions of the beach, on occasions when there are certain

currents, the beach is littered with all sorts of refuse and garbage. I have seen all sorts of vegetables and such things as grapefruit skins, orange skins, and things of that nature. This occurs after storms, as a rule, and it is quite common with a northeast current. I would not say that it was anything that would be very pleasant. It is frequently quite unpleasant to try to sit down on the beach when there are all sorts of garbage and that sort of thing about you; [671] since in the summer the greatest attraction is the beach, it is quite undesirable to go down on the beach where you have to have that particular feature. I have never identified any objects among the garbage with names or addresses on them. I cannot say I have with certainty, because I never looked for such.

I know that there have been times in the past when it came up, but of recent years I can say definitely that it existed to quite a degree. I have no specific information or time or date or subject except that I understood I was to come over merely as a representative citizen to testify to the condition as I have known it to exist. As to the development of Sea Girt I know there are a great many people who come there who object to the fact that the garbage is there, and when it is very noticeable almost everybody will remark about it, and from that point of view, I dare say there is a serious objection.

[672] On *cross examination.* I mentioned a northeast current at Sea Girt. It is the current usually associated with a northeast storm and strong northeast wind, and it sweeps into there from a northerly direction, as contrasted with the south winds, which are quite common in the summer when the wind is from the northeast, the current usually comes from the same direction.

Q. The only time the objects are cast up on your beach by the sea is during a very heavy storm, when the wind is in a northeasterly direction?

For Plaintiff—Miss Margaret Landon, direct.

A. I would say it is most noticeable at that time, because it is only when you have a storm of that kind that you have a current of that kind; and then the stuff comes up further and enough to get on the beach. There are times when the stuff will come up with the undertow, but it is quite noticeable with the storms.

Q. This condition that you describe does not [673] continuously exist for days and weeks at a time, does it?

A. When you have a severe disturbance in the ocean, and the tides are running high, it will wash up and down with the tides from the beach, rather than deposit at some point on the beach and remain there, under such conditions as you find it in the undertow, and particularly with the bathing; so that that lasts some time, and leaves that stuff high and dry.

Q. That is related to the agitated condition of the sea?

A. I think it is.

Q. And when you have pleasant weather, you have no garbage condition?

A. No, I think not.

MISS MARGARET LANDON. On *direct examination.* My winter home is in Bordentown, New Jersey, and I [674] live in the summertime in Sea Girt. Three blocks from the beach, on Chicago Boulevard. I have been a summer resident of Sea Girt I think fifteen years. I go to the beach every day. I am familiar with conditions on the beach with respect to garbage. At times it is littered with garbage that has been washed up by a high tide—all kinds of garbage—skins—anything that will float. It consists of vegetables principally—grapefruit skins I have seen there, orange skins, onions I have seen many times. It is unpleasant to go down expecting to sit on the beach and find that you may be sitting down where there are disagreeable things left. As to the bathing [675] if you happen to go in at times when there is an undertow, and the water is filled with it, it is very disagreeable.

For Plaintiff—Mrs. Mary V. Graham, direct.

The attraction of Sea Girt is the beach, and when the beach is littered with garbage, it loses a great deal of the pleasure of it. In the early spring, before the city authorities had the beach cleaned—it is very often dirty and disagreeable to go down to; I could not tell you definitely how many days. I have never identified any objects in the garbage that had names or addresses on them.

On *cross examination.* I mentioned in the early spring. I refer [676] to the last part of April, May and June. We rarely come down to stay until the middle of June. We come down frequently at week-ends before that.

MRS. MARY V. GRAHAM. On *direct examination.* I live in Philadelphia. My legal residence is Sea Girt. At times I have been down parts of eight months in Sea Girt; sometimes parts of six months; sometimes four months at a stretch. I have a home at Sea Girt, about two squares and a half or three from the beach. [677] I frequent the beach almost every day. I have been going to Sea Girt for 48 summers. I have been familiar with the garbage condition on the beach. I can describe it; there are times when you go down to the beach and try to put a blanket down and fix yourself comfortably, and you find potatoes, onions, banana skins, and all kinds of fruit, which is very objectionable. I cannot recall how often this occurs, but it has happened periodically all through the different times that I have been there; I mean the recent years. The effect upon our use of the beach is it is not a very pleasant condition to bathe in, an ocean when those things are floating around, or to sit on the beach when they are beside you. The chief attraction of Sea Girt to me I would say, is the beach and the bathing. I have guests there and friends come there [678] I think at times they have been there when it has happened. I think it is talked about very strongly that it has happened. It is

very objectionable. I have never identified any objects indicating names or addresses. I have not thought about it.

On *cross examination.* I have told you all I know about these conditions.

EDMUND ROBERT WILLETS. [679] On *direct examination.* Sea Girt is my official residence. I stay there about six months of the year. My business is broker in New York. I live directly on the ocean front. The attraction of Sea Girt for me is the beach and the bathing. I have been going there all my life.

Q. Have you encountered this garbage situation? Just describe it from your point of view.

A. Well, invariably there is some sort of garbage on the beach, and if the beach were not cleaned up, say, every two weeks or every week, it would get filled with it; and at times it is so bad that you cannot go in bathing, that is, with any pleasure at all. I never kept track of the time I could not go in swimming on account of the garbage, but I should say quite often.

[680] Q. Now, just describe the condition which makes the bathing objectionable?

A. Well, there is a certain amount of—I do not know whether you would call it disintegrated garbage, or dirt—filth. I would not call it sewage, which is floating on the surface of the water; and you certainly would not like to go in swimming under those conditions. I never identified any objects with names and addresses on them.

On *cross examination.* This filth that I refer to as floating on the surface of the water was not oily in composition, I should say. It looked more like fine particles of dirt, specks, and sometimes a lot of dead flies—in addition to larger pieces of garbage and rubbish. [681] I have seen oil come in on the beach at Sea Girt.

For Plaintiff—Mrs. R. B. Patch, direct.

Q. That covers the surface of the beach and discolors the sand with oil?

A. At times it has, but generally it is congealed, more or less, to more like tar than oil.

Mr. Crowe. Yes, that is what I mean.

MRS. R. G. PATCH. On *direct examination.* I live in Philadelphia in the winter and in Sea Girt in the summer. I would say three to four months out of the year in Sea Girt. My residence [682] is three blocks from the beach. I have been staying there about 15 years. The attraction of Sea Girt for me just at present is the beach, the benefits I get from the beach, the benefit my child gets from the beach. I have encountered this garbage condition on the beach; there are particles of garbage, all sorts of garbage, from fruit skins, onions, vegetables, corn cobs, to say nothing of mattresses, springs and things like that. I find it a number of times during the summer. I do not know just exactly how many.

Q. What effect does it have upon your use of the beach?

A. It has quite a lot. I have a small child that picks up all sorts of things, and it makes it very disagreeable to have to watch her so carefully.

Q. Are you able to use the beach when it is filled with garbage?

A. Well, not comfortably.

[683] It affects my bathing. There have been times when the lifeguards have not allowed us to go in on account of the garbage. I have been down there on such occasions. I have seen garbage in the water, generally such as I described. I have never identified any objects with names and addresses on them.

For Plaintiff—R. T. Parker, Mrs. R. T. Parker, direct.

RICHARD T. PARKER. On *direct examination.* I live in Sea Girt. [684] Adelaide avenue, Highland Park. I have an official position in Highland Park. I am Mayor. Highland Park is across from New Brunswick, over the river. I spend my summers in Sea Girt. All the way from the last part of May to the middle of November. I have been going there since 1916. I live about two blocks from the beach. The attraction of Sea Girt for me is good air and bathing. I have encountered the garbage conditions that have been described.

Q. Will you just describe them to us in detail?

[685] A. Well, you take after a northeast storm, it is generally littered with onions, banana peels and all sorts of garbage. The effect upon the use of the beach is, you could not go in bathing very well when that condition existed, or could not sit on the beach. I saw it in the water; of course, naturally it dirties it. It is quite thick at times. I cannot bathe in the water under such conditions. I have never noticed articles with names or addresses on them. It has stopped me from bathing. When it was dirty and a nuisance, I would not go in.

[686] MRS. RICHARD T. PARKER. On *direct examination.* I live on Adelaide avenue, Highland Park. I summer in Sea Girt about two and a half blocks from the beach. I have been going there since 1916. I am the wife of Richard T. Parker, who has just testified. The garbage is very disagreeable at times. Of course, I do not go in bathing every day; but when it is pleasant I do. And I have found it very disagreeable at times. It has interfered with my bathing. [687] Whenever it happened I would not go in. Of course, after a storm it is worse. It leaves the beach in a littered condition—all sorts of refuse. It has caused complaint among the residents down there. It is very objectionable to bathing and sitting on the beach. Bathing and sitting on the

beach is the main attraction. Of course, they can take walks. That is the chief attraction.

JOHN HILLIG. [688] On *direct examination.* I live in Yonkers, New York. I spend the summers at Belmar. I have been going to Belmar 19 years. I am in the hotel and restaurant business. I was in the hotel business at Belmar for 19 years. I am still in that business there, just as a summer proposition. I have encountered garbage on the beaches at Belmar.

Q. What has been your experience with it?

A. Well, I have had an official position with the borough there on the construction of that breakwater and [689] jetty, as inspector, and on the morning of the 7th of February, 1929, I got down there—I noticed piles of garbage and rubbish of all descriptions, and along around ten o'clock I gathered up a mass of it and delivered it to the police department to send to Assemblyman Sterner, who has been a good civic worker in connection with conditions down there, and gave him all the things I had gathered up, which was in the nature of labels, billheads and various papers showing identifications and where it came from.

I understood he took that material to somebody—I understood Governor Larson—in connection with some work he was assembling at that time.

Q. Do you remember the names and addresses on any of that material?

A. Offhand, I cannot say.

Q. Do you remember any towns or cities?

A. New York City; and some of it out in Brooklyn, and up in the Bronx section.

[690] A. A similar condition there existed the year previous. In the last five or six years it seemed to become more acute. Being in the hotel business, I notice it more because of the complaints of guests. They naturally come to the shore for bathing, which is one

of the main assets, and in turn, if a condition of that kind exists, they simply change their plans. It certainly has a reaction upon my business. We have had occurrences of people reserving for a certain period of time, and a condition of that kind comes in, and they simply pack up their baggage and move off.

People who come to my place are vacationists for a limited period of their vacation.

Q. Have you at any other times identified any articles on the beach?

A. I never took any notice where it was from, except while I was being employed by the borough, and being employed [691] on the job. It was so acute at that time that I could not help taking notice of it.

I have noticed it in the water. Some of it is very—excuse my term—rotten, and others are quite fresh. I notice a lot of it that you could easily see that there is a lot of hotel life in New York—which is grapefruit; that was in the majority—that is, the shells or the remains of it.

Q. What effect did that have on the bathing, to your knowledge?

A. Well, it simply killed bathing, because people are not going to bathe in garbage; that is sure.

On *cross examination.*

Q. Those objects having names of New York concerns on them—were the names of the distributors or manufacturers printed on the labels?

A. On the labels, yes, and certain bills showing the merchants' names.

[692] A. I inquired for the assemblyman at the time, and he was not there, so I turned it over to our police department to deliver it to him, the first part of February.

Q. To whom in the police department did you deliver it?

For Plaintiff—Edward L. Mix, direct.

A. The man at the desk at the time; I could not say. I do not remember his name or other marks of identification. He was simply desk man. The day that I delivered these articles I am referring to to the police department was February 7, 1929, 10:30 o'clock A. M. I picked those articles up off the beach myself.

Q. What part of the beach, with reference to the water line and the rear line of the beach, did you find those articles?

A. Well, I should say it would be about the water line, or for a distance of 50 to 100 feet. There is a very wide stretch at that particular point; there is a stretch of [693] the beach there in the neighborhood of 400 feet, at the bulkhead.

The beach is 400 feet wide at that particular point, because it is right where the jetty is constructed, and it slopes southwest; it is narrower as you go further down south. I am engaged in the hotel business in Yonkers. I operate my hotel at Belmar from May until the end of September.

EDWARD L. MIX. On *direct examination.* I live in New York City in the wintertime—152 West 72nd street. [694] I spend the summers at Belmar. I am engaged in business there as a photographer. I have been in Belmar 25 summers. I am familiar with the beach conditions in Belmar. During the summer, at certain times when the wind and current is from the northeast, why, there is a lot of rubbish and things that come in on the beach. It consists of bottles, tin cans, boxes, grapefruit, oranges, and various things of that type. I was requested to take some pictures of the beach at Belmar. I recognize those as taken by myself. [695] (Examining photographs.) These were taken on the Sunday before Labor Day, 1929.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 125" to "Complainant's Exhibit No. 146," inclusive.)

For Plaintiff—Edward L. Mix, direct.

Q. I have here Complainant's Exhibits 125 to 132, both inclusive; 134 to 137, both inclusive, and 139 to 146, both inclusive. I ask you to say generally what those pictures show. What was the purpose of taking the pictures?

A. (Examining photographs.) The purpose of taking the pictures was to show the crowds on the beach—the use to which the beach is put. During the summer and through the height of the season. This (indicating) is taken showing the north end of [696] the Fifth Avenue Pavilion. They all show the beach condition and the crowds on the beach at Belmar. On the date that I took them.

Exhibit No. 133 shows the Fifth Avenue Pavilion at the head of Silver Lake on the ocean front, that is, on the boardwalk, facing the ocean and Ocean avenue. It is used as a dance hall, and at either end of it a concession. They are rented for refreshments or amusement purposes, and in the center is a dancing pavilion. [697] That is a municipal building maintained by the city.

Q. Exhibit No. 143 and No. 142 show the parking condition—how they park the automobiles on the east side of the avenue, allowing this space here (indicating) for the north and south traffic. That is intended to show the automobile traffic at that time and the position of the parking, facing the boardwalk, on one side of the avenue. I have not encountered the garbage conditions down there personally. I have heard complaints about the garbage conditions, very much so.

Q. Do you know to what extent, if any, in specific particulars it affects the business or the visitors at that place?

A. Well, yes; this is during the fall, since going back to the city, I had one of my patrons drop in who is also used to going to Belmar, and she told me the conditions of the beach were so horrible that they would have

to leave [698] the place. She was referring to 1929, this last year.

On *cross examination.* We have heard of a lot of others, but nothing specific.

Q. Only one person said they would not go back next year?

A. Yes, it just happened to be brought up in the conversation.

Probably hundreds of thousands go to our beach in the summertime—last summer—and out of hundreds of thousands of people that went there, only one said they would not go back that I know of specially.

[699] ALEX STEEL. On *direct examination.* I live at 52 14th avenue, Belmar. I live there the year around. I am familiar with the beach—particularly in the summer months. I have a fairly good knowledge for the past two years; since we have had an improvement association, I happened to be its president. That is the Third District Association. The purpose of that association is to make general improvements which include the beach, owing to the fact that a great many residents are renters of their homes or other property. [700] My attention has been drawn to the garbage situation on more than one occasion, but that was through a member of the association just drawing my attention to it; they drew my attention to any fault they might find with the borough. It was the cause of my complaint to the commissioners in reference to the condition of the beach. I have examined the beach when there was garbage on it—this summer, I do not know the exact date; I would say about August 10 or 15, or something about that time; the early part of August.

Q. And what was the condition you found there?

A. Well, particularly—it was on a Saturday, so that if you want to know the exact date—on this particular

occasion, there was quite a deluge of cucumbers. There was other litter there—anything that would float—orange peel, watermelon rind, honeydew and things of that description.

Q. How many occasions can you recall in the past when there were garbage conditions on the beach?

[701] A. There was one earlier in the year than that, but not quite as bad a state as the one in August. Then I believe there was one still later. The one about the first week in August, I would say, or close to that date, was the worst.

I have seen the garbage floating in the ocean on several occasions, three or four, five or six, a distance of 150 or 175 feet.

Q. What area of garbage in the water?

A. The width of it probably would be 10 to 25 feet wide, and possibly the whole length of the borough. A regular windrow all along the beach.

Q. Have you ever identified any objects that had names or addresses on them?

A. Never that I had taken at that time. I did not know that this hearing would be had. But I have some there (indicating) that I picked up today. Here is a bundle of them. That stuff is still wet. [702] That is one particular one that might serve the purpose (indicating). That is a collection of milk bottle caps as well as slips, cash slips, milk bottle caps, paper milk container.

Q. I show you a bundle of papers, and ask if that was included in the garbage you picked up today (handing papers to witness)?

A. Yes, sir.

Q. This reads, "Addso Fresh Cookies and Cakes. Brennan Baking Company, Inc., Bronx, 1442 West Farms Road and 125 Flushing avenue, Brooklyn."

And here is a little card or pamphlet which reads, "City of New York, Department of Parks, Borough of

the Bronx, Joseph P. Hennessey, Commissioner of Parks, Van Cortlandt Links." That is a golf score card, is it not?

A. Yes, sir.

Q. Dated when?

A. December 19, 1928.

Mr. Minard: We will not go into all of these milk bottle caps. Here is one from Borden's, 460 West 128th street. Here is one from I. E. Nathans, 543-547 West 25th street, New York City.

Here is one from Borden's at 324 East 102nd street. [703] Here is one from Sheffield's, at 574 West 57th street. There are other addresses here (indicating). Here is another 57th street.

Here is one from Sheffield's, at 574 West 57th street.

Q. What was the condition surrounding those things on the beach when you found them? What else was there there?

A. Squash and orange skins, eggplants, several bottles, pieces of wood. I have seen a shaving brush there; there was no name on it. All kinds of litter.

I have never identified articles found with names and addresses on them.

On *cross examination.*

Q. Is the condition of the wind and weather and tide that exists here at Asbury Park today the condition that has existed for some several days past?

A. Well, I would say about the weather—I don't know about the wind; I don't know about the sea. This is the first I have been on the ocean for a week or more.

I am not now living in New York City. [704] My home is in Belmar. Sometimes I do not go down to the beach for a month during the winter months.

For Plaintiff—Albert B. Carver, direct.

ALBERT B. CARVER. On *direct examination.* I live at Bradley Beach. My business is lobster fishing. I fish for lobsters from May until November. I have been in that business about 17 years. I have seen the garbage scows dumping at sea. [705] I have never identified any of them. I have seen them once or twice, I should judge, the whole time. I do not fish that far north. I have seen the condition of the garbage in the sea after it was dumped out. I have followed it in to the shore lots of times.

Q. Describe when you have first seen it, that is, garbage that you saw dumped, and how far you followed it in, and under what circumstances?

A. The garbage that I saw dumped I cannot say just how far we followed that in. But garbage that I have seen offshore I have followed that 11 or 12 miles to the beach.

Q. You mean a continuous line to the beach?

[706] A. Yes, on the tides.

Q. And how far did you pick it up, how far offshore?

A. Well, sometimes I would not pick it up until I was four or five miles offshore, and when I would get in, it would be on the shore.

Q. What area of the ocean did it cover?

A. Well, at times I have left the beach and have had garbage all the way out.

Q. How far out?

A. 11 miles.

Q. A continuous line of garbage 11 miles out?

A. Yes.

Q. And what formation was it in? Was it a strip or a broad area?

A. A broad area.

Q. How wide?

A. It would be 11 miles out, it would be as far as you could see up and down.

For Plaintiff—Joseph H. Vaughan, direct.

It interferes with my business—running the boat. [707] After a storm we get a lot of it in our pots.

Q. Can you describe what is in this garbage that you see out there?

A. There is all kinds of vegetable matter, and all kinds of boxes and woods of all kinds. I have seen the scows when they dumped it, yes.

Q. What have they contained then?

A. I think I have never noticed.

I have never been close enough to identify individual things; that is, whether it was wood or garbage while they were dumping. There is nothing else that I recall in this garbage that I saw—not outside the vegetable matter and the sticks. That condition has existed ever since I can remember.

JOSEPH H. VAUGHAN. [708] On *direct examination.* I live at Bradley Beach. My business is captain of lifeguards. I have been captain 19 years. I have been working on the beach 23 years. I am there every day from April until October.

Q. Have you ever encountered the garbage on the beach?

A. Plenty.

Q. Tell us about it in your own way.

A. I saw windrows in 15 to 25 feet width and 6 inches deep. Sometimes it would be—in Bradley Beach, I would say two or three carloads of white onions come in, it seemed to be all onions at that particular time; at other times it comes in with watermelons and cucumbers, cranberries and a couple of chickens, and occasionally a dead dog, and [709] all kinds of fruits.

I can be a little more specific about the things that I have seen. They all interfere with bathing conditions; people will not bathe when they are there. I regulate all the bathing; I have all to say about it.

For Plaintiff—Joseph H. Vaughan, direct.

Q. About how often does it occur that the garbage interferes with the bathing?

A. About 10 or 12 hours after a northeaster starts, why, it is thrown up on the beach. That condition lasts until the tide changes; two hours after the tide changes, about, the water is nice and clean, clear green; it looks like filtered water. But when it comes from the northeast, it is dirty and discolored.

Q. What is there that is particularly offensive about this garbage?

[710] A. The odor from it, and the people will not bathe. I have been on the beach so many years, and know about it, and they all come and submit their troubles, and they all come down complaining about the beach and the garbage, and turn around and walk home.

Q. Can you give us any idea of about how many people are affected per day by that sort of thing?

A. I would say that from 500 to 1,000 turn their backs on the beach and go home, and some of them take only a little dip.

Q. In a single day?

A. Yes, we have big crowds, you know.

I have suffered ill effects from that garbage condition in the water—about six years ago. Myself and five or six other lifeguards here, and also in Asbury, had a rash on our bodies, which was from the ocean. I think we used Cuticura Soap, and used other things, to dry it up. We employ from 13 to 21 lifeguards at Bradley Beach. It depends on the conditions; if we have large crowds or a hot summer, we [711] have more men. If we have a mild, easy summer, I cut down. We always have 17 on a week-end, and sometimes 20. I have passed out of New York harbor probably thirty or forty times in my life, or more. I used to pass through the garbage then when I passed; every 16 days I would go by here. I was not interested in garbage then; I was working. But I always saw the garbage then, and I have seen them

throw the garbage out, but I was not interested. That is the time I speak of sailing through it in my vessel, going and coming back. I have records of the number of people bathing at Bradley Beach in the summertime—on Sunday, 25,000—[712] in a mile of beach, a short mile. I have seen the effect of the garbage on the bathing suits of the people who have been in the water. If we have a north tide—it does not necessarily have to be a northeaster—but if we have a north tide running ten days, running continuously from that section, from the north, it will bring down a sort of scum and filth on the ocean that has been dissolved into small particles. It is dirty and smells, after it has been up there with that garbage which has been unloaded; it is pulverized garbage and people have to go up and take a bath. It is dirty. It is like wet dust, I think. I would say it is vegetable matter. [713] It is filth. The ocean has a scum on it when it runs a long time from the north.

Q. Have you ever seen accumulations of garbage that you have examined to identify objects so that you can tell us what kind of objects there are in this garbage at different times?

A. Yes. I can. I saw watermelon rinds, cranberries, onions, orange peels, banana skins, banana stalks, chickens, a dead dog once in a while—almost a whole calf I have buried; in fact, no one would approach it but me.

Q. Why?

A. It was rotten; that calf had been cut up in a butcher shop. It was skinned. It had been dressed and partly cut up.

Q. Is there anything else that you can think of?

A. Grapefruit and pieces of wood, enormous pieces of timber—big lumber. In fact, we had to stop bathing when we had a northeaster on account of the big pieces of lumber. [714] That is, we would stop it and chase people out until we would get a telegraph pole and let it go by and go on towards Belmar. You could not

salvage it, because it would take two or three teams to pull it out.

We capture and drag out small particles of wood out of our bathing area. We have to protect the women and children from being hit. That is our duty, to protect the public.

Q. Have you ever identified any articles that had marks, as names or addresses, on them?

A. Very few, only milk bottle tops from West 57th street, Sheffield's. And I remember a lot of coffee cans, Sanger, or something like that, Corporation—and the Brooklyn Color Works, that is paint cans.

On *cross examination.* When this rash broke out on my body, I treated it myself. [715] It responded to treatment by Cuticura, especially after we quit bathing. It came back on me when I went down to Palm Beach to work, and I had to treat it again. I came back to Asbury Park, because all our lifeguards were breaking out with this rash. And that summer we had an awful lot of north tides. The tides were sweeping from the north, and it was dirty water.

Q. The same kind of rash broke out at Palm Beach?

A. No, my rash came back at Palm Beach.

We never consulted a physician about it. We came up to Asbury Park, and they had it, too. I do not know what the medical profession calls that, or diagnoses that rash. But I never had anything like it before or since. It was just during that one summer. We had many north tides that summer. The rash is on the chest or under the arms. And a lot of [716] the guardsmen at Asbury Park also got it. It seemed to favor any parts that would perspire. The rash would show on those parts of the body where they would perspire the most.

For Plaintiff—Claude A. Birdsall, direct—cross.

CLAUDE A. BIRDSALL. On *direct examination.* I live at Howell Township now. My profession is civil engineer. [717] I am the engineer for the Borough of Belmar and four other municipalities. I am familiar with this garbage condition. After every northeast storm, the beach is littered with garbage and trash, the nature of which is seasonal. In the summertime, it will consist primarily of melon rinds, of watermelon and muskmelon, and that sort of fruit; oranges and grapefruit are nearly always there, but in the winter predominate. And at times there will be tomatoes; tomatoes will predominate at certain times, accompanied by oranges, grapefruit, bananas, and so forth. I have seen dead chickens. That is all that I have noticed.

It litters the beach to such an extent that it is obnoxious. It smells, and personally I do not want to go in bathing when the garbage is on the beach.

[718] Q. Do you know to what extent it interferes with the pleasure of the visitors?

A. No, I am not familiar with that phase of it, except that I know that the people complain about it and will not use the water while that condition exists. I have identified crates with New York addresses, and I have seen hotel menu cards of New York hotels. And just two days ago, on the 13th, I was down at the beach in connection with some work, and saw one of the Borough employees pick up various objects along the beach, which consisted of restaurant checks on New York restaurants, and containers, these paper containers, and such as they sell ice cream or milk in, with New York addresses.

On *cross examination.* This employee's name that I saw picking up these objects I think is Mr. Cook.

For Plaintiff—Joseph M. Cook, direct.

[719] JOSEPH M. COOK. On *direct examination.* I live at Belmar. My business is working for the borough. I have been there nearly two years. I do whatever they give me to do in the borough.

Q. Do you have anything to do with the beaches?

A. No; only when the boss sends me down there; they [720] are cluttered up, and I go down there to clean them.

Q. What do you mean by "cluttered up"?

A. When the garbage comes up, I go down there and clean the beach.

Q. Frequently or only occasionally during the past few years?

A. When there is a northeast wind in the summertime. I was down there Monday morning of this week, the 13th.

Q. Did you find anything down there that had identification marks on it?

A. I did.

Q. Show us what it is.

A. Right in that can (indicating) that was found today. That is a Sheffield container from Sheffield Farms, [721] 1045 Webster avenue, Bronx, New York.

Q. What are these other things?

A. Here (indicating) is a time sheet.

Mr. Minard. This is a time sheet for the week ending October 31, 1920; no address; well, we cannot identify that.

Here is a billhead of T. F. Ferdinand, Wholesale Fruit & Produce, 51 West 12th street, New York. That is May 19, 1900, and something, but the year is not written out. These time slips have no date. Here is a heading from Swift & Company, Gansvoort Market, 21 Tenth avenue, New York City.

Here is a slip from Exchange Catering Company, 340 Sixth avenue, New York.

For Plaintiff—William Neuhausen, direct.

Here is an oyster lid from Lester & Toner, New York City; it does not tell their address.

That (indicating) is a mass of sales slips. Here is one from Lester & Toner. It says, "Packed Especially for L. Ottenheimer, New York City." Lester & Toner, we have had a number of their containers here this [722] morning, and they were Fulton Market, New York. Is there any name on here (indicating another package of papers)? There is no name on this heading (indicating). It is just a blank sheet with a number of addresses of customers on it. They are customers' addresses, from White Plains, and evidently these did not come from the customers; they came from the dealer. We will not bother with that any more. We cannot identify that one.

Q. What was the condition of the beach where you found these papers?

A. Very bad. There was tin cans, there was bottles, and orange peels, grapefruit, there was chickens; there was squash, pieces of lumber, and so on—Christmas trees.

[723] WILLIAM NEUHAUSEN. On *direct examination.* I live at Bradley Beach. My business is police officer. I have been a policeman five years. I have lived at Bradley Beach 20 years. I have been connected with the city government there five years. I have been familiar with the beach conditions the last 15 or 20 years. I am familiar with the garbage situation. [724] I see grapefruit, bananas, potatoes, lemons, onions, carrots, squash, chickens, tin cans, bottles. I have not seen no animals there. I can give particular information about quantities of bottles as a hardware dealer came to me in a storm we had in August and asked me if he could get the bottles off the beach; it made no difference to me; and I said, "Go ahead," and he had three children, and he went down there and got them. So he was making two or three loads in the morning, and I went down in the

afternoon, and I saw he got a thousand bottles off the beach; and I asked him how many he got, and he told me he got between 3,500 and 4,000 off the beach. That was in that storm in August.

Q. Have you ever seen any articles there that had identification marks on them?

A. I did, in August. It was from the Hotel Astor, but I do not know; it was like receipts from guests. [725] It was more like a charge slip. I imagine it came from the steward, or something; the steward's name was on it. I forget really what it was. There was a whole big bundle of it—stuff that has been delivered to the Hotel Astor, and the steward signed for it; that is what I imagine it was.

I am around the beaches in the summertime. The most complaints I get is the broken bottles, of children that have been cut, and some of them severely cut; some days it is an awful condition in the summertime. I imagine the bottles get broken up by the waves; they hit together. Some come in broken, and some come in whole. [726] I was down there yesterday and found some. I picked these things up (indicating bundle) on the beach. Here is one from the Biltmore Dairy, 2725 Broadway, between 104th and 105th street, also an address 560 Amsterdam avenue, corner 67th street. That is another one I picked up. Here is another, from Borden's, West 127th street. Here is a part of a ticket, "Tedorfs Concerts, the only New York recital, the only vocal art." "Town Hall, 114 West 43rd street, New York."

Here is another. It says "DuBarry's, Broadway and 77th street, Broadway and 110th street, New York."

Here are a few more milk bottle caps, Sheffield's, 138 Fulton street, 632 West 125th street. Here is one Tenth avenue. [727] I picked up some of them yesterday. The one in the envelope January 13th and 14th. Those are all milk bottle caps. We have lots of these; they all have addresses on them similar to the ones we have already

had, apparently. These were picked up during the present storm. The beach was clear before the storm.

Q. Is this a condition that comes with every storm?

A. Well, I do not know about every storm; I cannot say. Sometimes we have them when storms do not come, I guess.

Q. Do you know whether the direction of the wind has anything to do with it?

A. No, I cannot say whether the wind has anything to do with it, or the tide; I do not know...

[728] CHARLES POLAND. On *direct examination.* I live at Bradley Beach. My business is supervisor of streets and public works and police officer. I have the cleaning up of the garbage. I have been engaged in that work sixteen years. There are times, four or five times a year, that it is very bad. [729] It takes me a week or ten days to clean it up with four or five men and two teams.

Q. How many loads would you take out of one batch?

Q. Well, we have nearly a mile of beach, and there will be some portions of it that will be very thick, and other portions that there will not be very much of. You can find almost everything from vegetation to live stock and chickens, on up to hogs, whatever garbage consists of, we have a full variety of it on shore. This occurs three or four times a year; sometimes oftener. I have picked up articles that had names or addresses on them, but I have got no list of them.

Q. You have no list of them?

[730] LOUIS J. FARRY. On *direct examination.* I live at Bradley Beach. My business is carpenter. I am familiar with the beach conditions there. I have been about seven years. I know it happens quite frequently down there that the garbage comes in on a northeast wind. It does not always mean it rains or storms,

but if the current is coming from the northeast, we get the garbage. Sometimes we get a great lot of it, and sometimes not so much. I am the beach carpenter. [731] I am on the beach from March until probably the first or second week in November.

Q. Have you ever identified any articles there that had names or addresses on them?

A. I have often seen them, yes, picked them up, looked at them, and throwed them down, but I just could not recall. Last summer I saw the only thing that comes to my mind that I am sure of, is a lifeguard boat; one of the lifeguard boats from Coney Island came ashore and was pretty well broken up when it came ashore, but the name was on the side of the boat, and it went to pieces against the jetty there.

Q. What have you particularly noticed among this garbage?

A. Why, banana skins, orange skins, lemon skins, grapefruit, watermelon rinds, honeydew rinds, onions, carrots, cucumbers; everything generally that would be in garbage; cabbage, lettuce. I have seen crates of lettuce very far decayed, and it had to be thrown away.

FRANK BROWN. (Recalled.) [732] On *direct examination.* I took pictures yesterday, those are the pictures I took.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 147" to "Complainant's Exhibit No. 169," inclusive.)

Each one of these photographs shows the date and the place of its taking. In the lower left-hand corner. Also right.

[733] On *cross examination.* Those are enlargements. The size of the camera was five by seven. I make the enlargements. They have been enlarged to a diameter and a half. These pictures refer to different municipalities,

from Loch Arbour to Seaside Heights—or Seaside Park is the farthest point south that we went.

[734] Q. What time of the day were these pictures taken?

A. We started, I should say, ten o'clock in the morning, and finished about four-thirty.

We commenced at Loch Arbour. Worked south and finshed up at Seaside Park. The distance between Loch Arbour and Seaside Park along the waterfront is in the neighborhood of 18 to 20 miles. The original films at hand at the shop, at the studio.

ALLAN L. POWELL. [735] On *direct examination.* I am the Mayor of Brielle. This is my second term. I have been Mayor two years, and am getting into my second term now, of two years. I have lived there for a long time. Five years.

Q. How long have you been familiar with the beach conditions at Brielle?

A. Well, every time we would hear the beach roar, we would go down and see how bad it was.

Q. What do you mean by "bad"?

A. The ocean, I mean, not the beach. We could hear [736] it plainly at the house, and we would go down and look at it, the "missus" and I.

I can say I have never seen it when it was rough that there was not garbage. Pretty nearly everything—skins of oranges, grapefruit, bananas, and some lettuce, onions that have been thrown away; something like that. I have seen dead chickens down there.

Brielle is a summer resort. We have a few steady year around. There is eighteen hundred, I think, in the summer, and thirteen hundred in the winter, if I am not mistaken. [737] I cannot remember what the assessed valuation of the borough is. I have no figures on the investments in hotels and boarding houses but there are two large hotels there, and two quite large eating places, restaurants, you

might call them. We have no boardwalks or jetties. When this condition exists we have no bathing. We go down to another beach. Brielle depends mostly on the bathing in the summer, and people stop there to eat. There is no industry down there except the summer business.

Q. How do the garbage conditions on the beach affect the growth and development of your community?

[738] A. I should say it hurts it quite a bit.

I have had one of our largest real estate people come to me and complain and ask me if I could not do something about it, that they were not making any sales. I have myself talked to the owner of the Sea Girt Grand Hotel; he has built himself a wonderful place down there, and he is willing to sell because business has dropped off. He complains because of the garbage. People have complained to him. That is the only complaint we have there as far as I know.

Q. Have you ever identified any names or addresses on packages or anything in the garbage?

A. Several times, but never thought to pick them up for evidence.

There was a couple of hotels—the Imperial Hotel in New York, Wallabout Market, that is all I remember.

[739] On *cross examination.* I saw the name of the Wallabout Market on a slip probably about that big (indicating), as far as I can remember. That was a pink slip. I could not say whether the commodity represented by that slip was sold in New York or somewhere else. The people commute back and forth daily from Brielle to New York City.

On *re-direct examination.* Wallabout Market is in Brooklyn.

For Plaintiff—William J. Orchard, direct.

[742] WILLIAM J. ORCHARD. On *direct examination.* I live at Maplewood, New Jersey. I am a sanitary engineer. I spend the summers at Bay Head. It is ten miles south of here (Asbury Park). I am president of the District Improvement Association of Bay Head, an association of property owners who have formed an association to do the many things that can be done to improve the community. Bay Head is a very high grade, strictly summer residential community, with an all-the-year-around population of about 300 and a summer population of from 6,000 to 8,000. [743] The total assessed valuation last year was $2,108,094. We have four summer hotels. I estimate that the assessed valuation of the summer hotels was probably less than 10% of the total valuation. We have 6,100 feet of boardwalk. About $40,000 was spent to provide it. We have a beach front of 6,100 feet. We have a few jetties in—no piers. Probably $15,000 has been invested in them.

Q. What is the relationship with regard to importance of your community to the beach, or to the shore itself?

A. I should say everything. If the beach and shore were not there, and were not usable, the community would have no value as a summer residence.

[744] The head of Barnegat Bay reaches Bay Head, and Barnegat Bay is attractive for sailing, but 90% of the people, or more, use the beach rather than the bay.

In other words, the water front is our sole attraction, whether it is in Barnegat Bay or on the beach. That is the only reason for the existence of our community.

I have been going to Bay Head regularly for seven years, all summer long. Previous to that I have made occasional visits. I have had a great deal of experience with the garbage. The Bay Head Improvement Association takes upon itself the job of cleaning the beach after these frequent depositions of garbage and waste upon it. That is one of our principal functions, to keep

the beach clean. The amount paid out by the improvement association, plus the amount that is contributed and chipped in by individual property owners will approximate $3,000 each summer.

[745] Q. Now, just describe this garbage, how it comes up, and what the effect of it is on the beach, and what it consists of?

A. On days when we have a west wind or a southerly wind, or a wind that is not too much in the east, from the south, the water is crystal clear, unusually clear for ocean water and bathing and playing in the water and along the beach is very enjoyable. If the wind sets in to the east, or to the north of east, within a few hours the water is no longer attractive, but is filled with floating waste characteristic of municipal areas—garbage, vegetables, occasionally dead animals, the offal of a city. It gets into the water and makes bathing so absolutely unattractive that nobody bathes.

The children refer to it as "garbage soup," and they will say to one another, "Are you going to bathe today?" "No, it is garbage soup today. I do not want to go bathing."

Yet, that material will pile up on the beach, and the receding tide will leave it there, and it will create such a nuisance—such a nuisance of odor and stench and unpleasantness that we simply have to get it away. It takes away all the attractiveness of the beach.

[746] The effect upon our community is very upsetting. It is very unpleasant. It takes away that playground air of ours, which is the principal asset of the community.

Q. Does the garbage come into Barnegat Bay, or into the inlet at all?

A. I have never seen it. I have never seen any garbage in the upper end of Barnegat Bay.

Q. Did you ever identify any objects with names or addresses on them?

For Plaintiff—William J. Orchard, cross.

A. Shipping crates and shipping tags, once in a while a crate—it is not unusual to have a whole crate of produce washed up, such as melons, or lemons, or tomatoes, or something, with a shipping tag on it having the name of a New York house; tags of material that showed that the cases came from the Washington Market in New York. I have never seen an occasion when that material was washed up in any quantity that there were not identifying marks on it that would indicate that it had been in New York City at one time or another.

I have never seen any other addresses in and among the garbage than New York City addresses—not that I recall [747] I have noticed particularly New York City addresses on packages or tags or something of that sort. More than a score of times.

On *cross examination.*

Q. Mr. Orchard, you mentioned that the articles that you saw bearing names and addresses indicate that at some time or another they were either in New York, or I should say, in or out of New York. Is that correct?

A. Yes; municipal offal, as distinguished from municipal sewage, is that material that is gathered up by garbage and ash trucks, being the domestic waste of a city other than sewage, plus the sweepings from the streets. It is garbage. [748] Offal includes garbage. It is merely an inclusive term.

Q. It also includes sewage, too?

A. Not in the term used.

Q. I want to know what it is that you saw in the water that can properly be classified as municipal offal and not garbage?

A. Bottles, cans.

It is part of the waste of a city. By the term "offal," I mean that I have seen garbage, plus bottles, plus animals, plus debris of the nature that you will see in

any city dump. Garbage is a term that is usually applied to wastes [749] from a city that are left over from products that were edible. The term garbage as I use it means kitchen waste—largely.

Q. What is the source of your information with regard to the assessed valuation and expenditures for boardwalks and jetties?

A. In order to check my earlier information, I obtained my information last night at a meeting of the Borough Council at Bay Head.

The Mayor and the assessor and the town clerk furnished this information. I saw the official records. The beach front property is privately owned. No part is municipally owned. The private owners have deeded a right of way for the boardwalk. The property owners own the land below water down along the beach front, and the riparian rights, I understand, to low water. That [750] is why our association is active and confronted with the necessity of cleaning the beach, because it is not a municipal beach.

CYRIL A. SMACK. On *direct examination.* Since my testimony on December 11, I have made further investigations on the dumping of garbage at sea. On Tuesday, January 7, 1930—I have here the report of my experience on that day. On that day I drafted it. [751] I will read the report as I drew it.

(Reading.) "Tuesday, January 7, 1930.

"On fishing cruiser 'Oceanic' with Axel Forsman and James Hall, owners and crew.

"Wind, south at eleven o'clock, changed to almost due north at 12 o'clock noon. Heavy fog of morning lifted rapidly after change of wind.

"Sighted tug and three scows about 4 miles S.E. by E. of Scotland Lightship at 12:30 P. M., coming in.

For Plaintiff—Cyril A. Smack, direct.

"Sailing to meet them, we passed the tug 'Woodman' and three garbage scows which were as follows: D. S. C. Q., D. S. C. O. and D. S. C. R."

D. S. C. Q. is the designation, apparently, that they have for the various scows. D. S. C. refers to Department of Street Cleaning of the City of New York.

(Reading.) "Some garbage was visible on each of the scows, the D. S. C. Q. having more than the other two combined showing in heaps and patches above ridge line, at least twelve cubic [752] yards on the Q scow alone.

"Running well aft of stern scow, we turn in their trail, which showed a definite trail of 'slick,' or grease and oil, as far as we could see after them. Following this trail as we headed back toward scows, we noted in it orange skins, lemons, papers, lettuce, celery, cundrums, pineapples, grapefruit, one sock, rags, particles of fat and a scum of grease on the water.

"Gaining to a point abreast to the northeast side of the stern scow, I asked Axel Forsman and James Hall to note closely the fact that we could hear the pounding of the gates of the scows against their sides as they rolled in the sea, and asked Axel Forsman, at the wheel, to run up close to each scow as we passed them. As we passed them, we could see the gates of scows R and Q swinging at least eight inches away from the scows on their lower ends as the scows rolled in the sea toward us. Then they would flap back with a resounding pound against the sides of the scows. Several times we noted a dribble of the garbage from scow Q. We noted, from a point abreast of Q scow in the masses still clinging rags, pieces of rope, grapefruit and orange skins, lettuce and celery. Again we passed to stern of the scows, noting as we left them that they were within a mile and a half of Scotland Light, yet no effort was being made to clear the dribbling masses clinging to the scows."

For Plaintiff—Axel Forsman, direct.

[753] On *cross examination.* I left the shore at Seabright aboard the same boat that I traveled in before—the Oceanic. That is a 34-foot boat. I picked the scows up about 12:30 o'clock. They were about four miles southeast by east of Scotland Lightship. The conditions that I testified to, I ob- [754] served there—absolutely. Perhaps we had them, the scows, under observation, perhaps, an hour and a half or more. That is traveling in toward New York. The scows were under observation from twelve-thirty until two o'clock in the afternoon—the last we could see. We could see no sign of any attempt to remove that stuff from the scow at that time. There were three scows that had material. But one had more than the other two combined. That was the D. S. C. Q. scow.

[755] AXEL FORSMAN. On *direct examination.* I live at Seabright. I was with Mr. Smack on the 7th of January.

Q. Just describe what you saw on these scows that he mentioned.

A. Well, as Mr. Smack says, we came offshore off the side of the scows about four miles off the shore or Scotland Lightship, and we followed them in, and we saw there was plenty of garbage dribbling from the scows. [756] And there was a slick coming from the scows, and the scows were leaving a trail of this slick; there was a trail of slick from the scows, because the doors were open, and the garbage was dribbling off the scows; the flatboat was towing the scows in, and the garbage was washing and rolling off; and so we came up behind the scows and saw grapefruit and stockings, and pineapples and paper and other sorts of stuff floating from the scows.

Q. What quantities were there clinging to these scows?

A. Well, when you were right close you could not tell how much in quantity, but a lot of this was on the

ridgepole that ran to the sides, and on the sides of two scows, I do not know which, the first or second scow, you could see it dribbling down, because the doors were swinging open, and she was rolling at sea, and the stuff was rolling off of it.

Q. What was the location of the scows at that time, with respect to Scotland Light?

A. Well, we steered southeast by east from the Scotland Light coming in.

Q. How far?

A. About four miles when we first sighted them. Then we ran in about a mile and a half; we pulled in underneath the [757] stern of her a mile and a half, and you could see it underneath the scows, and the birds were following it up all the time.

Q. How close to Scotland Light did you see these scows dripping garbage?

A. It must have been a mile and a half outside of it. They were still distributing this garbage within a mile and a half of Scotland Light.

On *cross examination.* These gulls follow the scows. Most of the time they drop this garbage there, and the birds take it and feed on it. Sometime when you are cleaning fish, they will follow a fisherman, and they will feed out of that. As the scow drops the stuff, the birds feed on it.

I never saw a gull throw a piece of garbage in the water from the scow, and then pick it up in the ocean. [758] I have noticed them drop it in the water and then pick it up again.

Q. You never saw them take it from the scows?

A. I suppose when she is hungry she will take it anywhere. If you feed a bird from your hand it will become pretty tame. There is no one on the scow feeding these birds from the hand.

This is the first time I have been out there observing these operations.

For Plaintiff—James Hall, direct—cross.

JAMES HALL. [759] On *direct examination.* I was with Mr. Smack on the 7th of January on the trip out; we met the scows coming in about four miles southeast by east of Scotland Lightship, and went alongside of them and saw all the garbage, southeast by east of Scotland Lightship, and we went close in alongside the scow and observed the garbage. One scow had a head of garbage about ten feet square, and it was dropping out all the time, and the doors were open, and they were swinging in and out, and it was dropping out all the time.

Q. How close to Scotland Light was this?

A. About three or four miles, approximately. That was when we met them. We were going out and they were coming in. We followed them about an hour. We probably got to [760] within a mile or a mile and a half from Scotland Light, when we left them. There was some garbage dribbling out when we were within a mile or a mile and a half of Scotland Lightship. It was being pushed down. I did not observe any men in the scows. There was a captain aboard the tug. There was nobody to make an attempt to clean them off. On one scow, on the slanting doors half-way down, they seemed to be stuck there, and a little bit of the stuff was dripping down.

On *cross examination.* The markings on the scows were D. S. C. One was O, and one was Q. I do not know the initials of the third one. All three were side dumpers. [761] I am sure about that. None of them were bottom dumpers. I have never been on one of these scows.

Q. You do not know how wide that ridgepole is, do you?

A. I could not tell. It is not very wide. It is simply that the garbage gets stuck on the sides. The middle is on the ridgepole, and the sides hang on.

I observed these scows for about an hour, more or less; I could not exactly tell. I did not look at my watch. We sailed within four or five feet of them. We were on the lee side of the scows, so you see we could go pretty close in. We examined all three scows. The name of the tug that was pulling the scows was "Woodman."

[762] FRANK FERRY. On *direct examination.* I live at Bay Head. My official position is Mayor. I have been there I think about twelve years all told. I have lived at Bay Head all my life.

Q. What experience have you had with garbage on the beach?

A. Well, whenever the wind is east or north, we have had plenty of it. It washes it in windrows. I have seen it six inches thick and possibly fifteen feet wide the entire [763] length of the town—of course, coming in in some places it is more than in others; it consists of everything that will float, almost; everything in the line of eatables, vegetables, fruits of all kinds. A great many times I have seen cats and dogs and everything that you can imagine—greases of all kinds, and of course, the bathing in the summertime—that is the main pleasure there, the pastime; it is impossible to bathe in the ocean for sometimes two or three days at a time.

Q. Is there any other attraction at Bay Head besides the seashore and the water front?

A. There is the Yacht Club and the bathing. But it is fresh water and is not as effective.

Q. What has been the effect of this upon your community?

A. There have been a number of people there that have sold out on account of it.

It is a matter of constant complaint, not every day, of course. It is a consideration to every owner there—and

the prospect. I have identified objects in the garbage [764] with names or addresses on them, mostly all New York addresses, I think. I have seen them every time that I go to the beach, almost; and particularly after a storm quite a few people get quite a "kick" in going down and overhauling it, like they would a garbage dump.

On *cross examination.* The people get quite a "kick" out of this—the people that seek that kind of amusement. What I mean is, not the summer population, and not the residents, particularly. In other words, they go "Klondyking."

FERDINAND KIENLI. [765]. On *direct examination.* I have been "Klondyking" on the beach the last day or two. These (indicating) were things that were picked up the other day, on the 13th of January, 1930. Coming in Sunday, the 12th, the superintendent called my attention to the pollution of the beach with the garbage, and we all went down there Monday morning, and that (indicating) is what we picked up. The condition of the beach at that time was literally covered up. Practically the whole area of the Avon beach. It was so bad that I went over to see Senator Sterner to call his attention to it, and he said he would [766] take care of it immediately. I asked him if there would be a meeting this week, so that we could report, as we just cleaned our beach about a week ago. But I instructed our superintendent not to touch anything until we told this condition of our beach. There was nothing peculiar about this avalanche of garbage different from the rest—the same as always. These articles that I picked up here (indicating) appear to be a wax paper carton of Sheffield Farms, 1045 Webster avenue, Bronx, New York, and another one of the same type, only one being a quart and the other a pint container, and there are thousands of bottles there, and decayed vegetable matter, and tin

cans. And here (indicating) are a few sales slips. J. L. Hershey, Men's Shop, 1407 Broadway, at 39th street, and one or two other Broadway addresses. There are approximately thirty of them there (indicating). You see, the bottles, the labels on them, are all washed off. This is the only thing. The last time to clean the beach [**767**] it cost $104. This was the last bad storm we had. This will cost us about $100. I think there are fifty loads of garbage there.

On *cross examination.* The beach has not been cleaned since the storm following which these objects were picked up on the beach; that is, we cleaned up the beach about a week ago. But since this storm of January 12, 1930, we have not cleaned up the beach. We simply left it there to show it to anybody who wants to see it. And the condition there yesterday was the condition that I testified—was literally covered with garbage and so on. There was no change in the physical condition of the beach with reference to garbage between Sunday and yesterday. [**768**] So that if the Court observed the condition of Avon Beach yesterday, he observed the condition which I described as "literally covered with garbage."

D. H. HILLS. On *direct examination.* I live at Spring Lake. My official position is Mayor. I have been Mayor seven years. I have lived in Spring Lake since June, 1890. The winter population is between 1,500 and 2,000 people, I should say. [**769**] Our town is a residential town, and we have a great many people that just come there for the summer; some own their cottages; some rent. We have two—we have several very fine hotels—two especially fine hotels—the Monmouth Hotel and the Essex and Sussex. They cater to a very fine class of people, a wealthy class of people. We have a great many business people from Philadelphia and New York

and Pittsburgh. I can mention some of them that might be known. There is Mr. Samuel Heilner [770] from New York and Philadelphia. He has offices in both places, and lives part of the winter season, I believe, at the Plaza Hotel in New York.

Thomas Morrison from Pittsburgh and Mr. Cook from Trenton, the linoleum man. I forget his initials.

Clifford Hemphill of New York City. His mother lives in Spring Lake the year around. He is a banker and broker. We had a Mr. Humes of a law firm in New York living on our beach front there. He just pulled out and left during this past year.

The attraction at Spring Lake is the ocean; the bathing, and the sea air the people come there to get. The summer population is, I should say, 15,000 to 20,000. The tax valuations are $7,000,000. I have made a note of those little matters. I think I have them right down here (indicating). We have our tax value of $7,000,000; a capital investment in summer hotels and boarding houses of $2,000,000.

[771] We have built a boardwalk there. It is about two miles long. I think I have the cost of it here (indicating paper)—boardwalk, $25,000. We have a system of jetties there and bulkheads at a cost of $300,000. We have a fishing pier and we have a casino. Our fishing pier represents an investment of $15,000, and the casino about $150,000. The object and purpose of these expenditures for boardwalk, jetties, piers, casinos, bulkheads, that I have mentioned are for the accommodation of our summer guests, for their comfort and pleasure, with particular reference to the beach. [772] These are all located on the beach. We spent this amount of money to preserve and protect our beaches.

We have had experience with garbage on our beach. I cannot say positively when this condition started in of garbage coming ashore on our beach to the extent that it has been for the last five or six years. It

comes up there in windrows, and we are almost sure to find it there with every northeast blow. It is a condition that our people have been disgusted with for several years. The offensive aspects of it are: In the summer it smells to the sky if it is allowed to stay there any length of time. Sometimes we had to allow it to stay for a day or two, in order to dry it out so that we could burn it up and get rid of it as much as we could in that way. Otherwise, it would take us a long time to cart it off. We have estimated the money we spent, as near as possible at [773] about $300 for every time we get a load of it on our beach. We have a Park, Lake and Beach Budget, and we have not kept that feature of it separate. It comes in on the same voucher.

In other words, our superintendent has numerous men that he uses on the streets, in the parks, and on our beach. We have not kept that separate, but as near as we can estimate it from going over those vouchers, we figure it costs us about $300 a northeast blow.

The consist of this garbage is about the same as I have heard the other witnesses describe at other places. I have a list of the stuff that I have seen on the beach personally. I have seen bottles in great quantity. I see those every time; they are particularly numerous; cans, wooden boxes and parts of wooden boxes; dead chickens, and dogs and cats; spinach, cabbage, turnips, carrots, potatoes, pillows; I have seen bed pillows on the beach; parts of cots; bed mattresses and springs attached to the wooden parts have rolled up on the beach; celery, lemon skins and rotten lemons; oranges, orange peels and decayed oranges; grapefruit peels; rags, cotton waste; grease; laths; broken lumber; banana stems; shoes, hats and broken chairs.

[774] Several years ago I made a collection of those things, and in going over this matter of the pollution of our beach with Governor Silzer in Trenton, he told me to forward those things to the custodian up there at

the State House, which I did. But I never heard anything from them, and there was never anything done in carrying this case forward or starting to see if we could clean up the situation. Those I picked up personally. Since that time I have seen some that have been brought to me at my store, where I made notes of them.

As I just stated, I took up the matter personally with Governor Silzer in his office at Trenton, and we talked over the situation. Also with Governor Edwards. And I talked over the situation with Edwards in my store at Spring Lake, and it seemed to be a matter that they were very much interested in. And I was assured that probably at some future time there would be something done about the matter to clear it up. I was also told at the time that [**775**] New York City was building incinerators as rapidly as possible. It was during Edwards' term, and Silzer's term. I do not just recollect. Silzer's term was five years ago, and Edwards' term preceded him. The term of the Governor is three years; so that that is a period of from five to eight years ago. [**776**] I did not make any complaints personally to New York City. We made complaints to the War Department. I think it was 1924. In regard to the identification of objects in the garbage, I do not remember what addresses were on the articles I found. They came from New York City; I remember that. There is nothing specific that has been done that I know of toward trying to disinfect the garbage, or anything of that kind; but I have had continuously complaints from women—[**777**] from families of children—from the mothers. They were very much alarmed about the condition of so much garbage on the beach. They were afraid that their children might get into things that might disease them. I have had that complaint continuously, I suppose, on account of my being a druggist and running a drugstore, I would possibly get that angle of it a little more than some others.

For Plaintiff—Frank Marucci, direct.

On *cross examination.* The fishing pier is not constructed by the municipality. The fishing pier is a Rod & Gun Club feature. They rent the ground there of the borough and put up this fishing pier at an expenditure of $15,000 or more. They pay the borough for that ground. We own the ground under the pier. The State has at some time or other conveyed all of the shore front property to the borough. The borough acquired it. It is municipally owned rather than State [778] owned.

FRANK MARUCCI. On *direct examination.* I live in Spring Lake. My business is dry cleaner and dyer and merchant tailoring. I have an official connection with the borough. I am the president of the council, the legislative governing body of the municipality. [779] I have been officially connected with the government of the borough for 14 years. I have lived there for 30 years. I have been familiar with the beach conditions at Spring Lake ever since I have been in council. I would like to go back to the time when I believe was the first I was in council, and the officials of different municipalities along the shore were invited to a meeting at Deal Beach, whereby the people of Deal Beach have, or were at that time fortunate enough to get Senator Copeland, who was the health inspector of the City of New York at that time. [780] The point I wanted to bring out was that he brought out the fact that the City of New York was trying hard to build the incinerator plants, and he set out that there was one at Staten Island, and that there was such a condition there that they had abandoned it, and so on, and finally, he promised that he would go back and talk the situation over with Mayor Hylan. He was an appointee of Mayor Hylan, so he stated at the time; and that is as far as we got. I should judge that is about 13 years ago. [781] Being an official—no doubt an official gets all the

complaints. And another time I received a complaint from a New York man who was in the office of—I think it was John Elingly, New York solicitor. This man's name was Hartigan; he was associated with him. There was garbage that was being strewed on our beach, and, of course, I knew where it came from. But going over this pollution question I thought it came from New York at the time, and I told him so, and he said, "If it did come from the City of New York, being in the capacity he was in, he would try to adjust matters." And he was promoted to—I think he was promoted to Commissioner of Weights and Measures after a year or so with Mr. Delaney. The garbage, in my opinion, is quite a menace, especially in the summer season. I have seen it on the beaches. Every time there is a northeast storm, I generally go down there to see what is coming in, and [**782**] we get anywhere from ankle deep to at least 12 inches in different spots. At one time, it took us —I think it was last April—it took us one week, with about nine men, to clean that beach; all I can remember is seeing three loads of bottles. The garbage I did not stay to witness that. There were three loads of bottles alone in that contribution. I have examined this garbage to see whether there were identification marks, as names or addresses. I have picked up milk bottle caps coming from New York City, and several other articles which I did not—I placed some in evidence here, I think. I brought this one bunch. [**783**] That states the date upon which I found this (indicating). That was June 19, 1925. (Examining papers.) Chief Brown and I found this (indicating). The chief has died in the meantime. I made a notation there on it of the time and place, and we turned it over to Mayor Hills. This has identifying marks upon it. These are the slips that I found. They all seem to be from one place, and the name of the concern is Esposito Brothers, [**784**] Inc., Commission Merchants, Fruit & Produce, 109 West avenue, Brooklyn,

N. Y. Wallabout Market. They seem to have dates on them—October 4, 1921.

Here is another one, October 4, 1920. They all seem to be the same day. They bear a paid stamp of Esposito Brothers. There are fifteen of them in the package. There is a milk bottle cap there. That was picked up on February 7, 1928. I have two milk bottle caps here. One of them from Weishman's Dairy, 134 East 170th street, and the other is a Borden's cap; that is marked "Pasteurized at 460 West 128th street." Mr. Clayton was on the beach at the time we picked these up (indicating). [785] In my judgment, along the seashore there is at least a million dollars spent by sports who surf fish during the summer months, and when the northeast wind prevails, this trash and garbage comes in, and it prohibits that sort of sport. A fisherman can fish in rough water; at least, there is a certain kind of fish that likes rough water; that is bluefish. They come closer to the shore in rough weather than in calm weather and this trash prohibits that.

MYRON O. MORRIS. [786] On *direct examination.* I live in Spring Lake. I have been Borough Clerk of Spring Lake over five years. I have lived in Spring Lake for 28 years. During that time I have had plenty of experience with the garbage on the beach. I took those pictures (examining photographs). These pictures were taken in April of 1929. I did not put down the day. They represent the conditions of Spring Lake Beach at that time. [787] The truck in the left-hand corner is loaded with glass bottles picked up from the refuse from the beach, to be carted away. The other pictures represent litter and garbage conditions as they were. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 170-A" to "Complainant's Exhibit No. 170-G," inclusive.)

For Plaintiff—Myron O. Morris, direct.

Q. I show you two more pasteboard sheets with pictures on them. Will you say whether you have taken those pictures (handing photographs to witness)?

A. I did. The date was February of 1929. I did not record the day. I took those myself. [788] These pictures also show the condition of Spring Lake Beach at the time they were taken, littered with garbage, trash, and other refuse. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 171-A" to "Complainant's Exhibit No. 171-E," inclusive.)

Here is one more sheet. I have another one here, marked A-3. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 172-A" to "Complainant's Exhibit No. 172-D," inclusive.) (Examining photograph.) That is a picture of the Monmouth Hotel and the Essex and Sussex Hotel, and the cottages adjoining, located between Atlantic and Sussex avenues, and between Ocean and First avenues in Spring Lake. It includes a portion of our beach front. I do not know who took that picture. [789] (Examining photograph.) This is Credit Airview Company, Long Branch. That particularly shows what I have referred to as a picture of the hotels and a section of our water front, including the plaza between Ocean avenue and the boardwalk. That plaza is in grass; it is up to this section (indicating) where you can see it is in the rough. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 173.") [790] I have identified objects other than those that I have here today, a lot of them. For the past three years I have been particularly interested in seeing just where the garbage came from, and have noticed it particularly, and in almost every storm, and have located a number of bottle tops with New York City addresses on them, and yesterday I saw a trunk in the refuse on the beach with a New York City address

on it, a check, or cancelled checks, with New York City addresses on the end of the check; sales slips with names, dates and addresses, and various other things all with New York addresses.

On *cross examination.* [791] Referring to Complainant's Exhibit No. 170-A to G, inclusive, in this picture (indicating) the driftwood appears to predominate in quantity. Complainant's Exhibit No. 171-A to E, inclusive, are not different views of the same materials. Comparing photograph A with photograph D, and having made that comparison, I still will adhere to my previous testimony. The width of our beach at Spring Lake varies. Its narrowest width is about 150 feet. I am not in a position to say to what the widest width is. My best judgment as to that is probably 200 or 250 feet, more or less.

Q. And these pictures represent the condition of the [792] beach which you have described as being "literally covered with garbage"?

A. I do not know that I described anything as being "literally covered with garbage."

Q. Did you say "littered with garbage"—do you recollect?

A. I do not recollect.

Q. You do not recollect?

A. I don't think I have.

Q. The objects that you have seen deposited on the beach with the names of New York concerns were similar to these milk bottle caps which showed that the milk had been pasteurized at a New York location, and the other objects were objects or commodities put out by New York concerns?

A. No, not necessarily, or not absolutely, either.

Q. Are you able to say whether or not you ever saw an object bearing an address of an individual in the City of New York, which object could not, by any chance,

have come into New Jersey and reached the water from some other source than garbage disposition?

A. That is the way I felt about it.

[793] J. G. NEWMAN. On *direct examination.* I live in Spring Lake. I am borough superintendent. I have been borough superintendent for six years. I have lived in Spring Lake for 60 years. I have been familiar with the beach conditions at Spring Lake for 40 years. I have had experience with the garbage on the beach. The last six years I have had it continuously. [794] Every time there is a northeast storm for three or four days, why, the beach would be littered with trash and garbage of all kinds—you could not mention anything, hardly, but what you could find it there—carrots and beets, banana skins, grapefruit rinds, orange rinds, lemons, potatoes, apples, onions, and any kind of vegetable or any fruit you could name, you could find it there; cats, dogs, chickens and everything like that. You find table victuals there; you find anything. You take the past week. We found bottles galore and electric light bulbs. Now, you have to clean them up, and my job is to get it cleaned up. And you have got to pick the bottles out and cart them away; if you do not, why, they break them on the beach, and children and people cut their feet awfully with them, and there is an awful amount of complaint about them. They are the worst thing there is.

As to quantities of bottles, I have got six Ford loads at one time out of one blow. That was in 1929. [795] The rest of it we have to burn the best we can. The animal stuff we have to bury. We get that cleaned up as soon as we can; we have to, on account of the stench; you cannot go down there and sit on the beach at all, the summer people who come there for that purpose, and you have to do the best you can.

I have had as high as 20 men at a time working on the beach, after one of these blows. I have no record

of how many truckloads of material were carted away after one clean-up. We do not cart it away. We burn it. The majority of it we burn. We have no place to dispose of the garbage and stuff in our borough. Our own garbage from the borough is carted away and goes out in the country by a contractor. In this garbage I have identified [**796**] objects with names or addresses on them; boxes and barrels and everything. I have not got so many of that here. I have picked up different things and turned them in; some of them; I have not kept them.

There is an affidavit on this (indicating) made October 29, 1929. It refers to certain articles listed as A, B, C and D. Here (indicating) is A. I made that affidavit. It states there that the bundle A was found on September 30, 1924. I have saved these things. Bundle No. 4 appears to be parts orders at that [**797**] time, Auto Sales, 869 Cortlandt avenue, at 161st street, New York City. They are dated August 2, that one is (indicating), but it has no year, so that we do not know. I turned them in to the Mayor, and he made that memorandum. I picked those up on the beach among the trash. This material (indicating) seems to be all from the same concern at that time, "Auto Parts." Here are dates August 2, 1923, August 3, 1923. They seem to cover a period all about August 2 and 3. Here (indicating) is August 7—well, here is July (indicating). So that it is July and August, 1923. There are roughly 150 of those parts. Exhibit B is a group of checks picked up June 5, [**798**] 1928. These (indicating) are cancelled checks on the East River National Bank, 530 Broadway, New York, and they are the checks of A. J. de Lorenzo & Company, New Linen & Cotton Cuttings, 180 Thompson street, New York City. There are about 20 of them.

Here (indicating) is the date, December 8, 1923, on some of them here, and the water has taken the date out of some of these others. Those were all together

when we picked them up. There are two items here (indicating), C and D. Item C is a bundle I found June 25, 1928. This (indicating) is a sales slip book of Vulcanizompany, Wholesale & Retail, 18th avenue, Northwest corner [799] of 60th street, Brooklyn, New York, containing, possibly, 50 pages. Item D, picked up on June 25, 1928, seems to be a pad of W. Heinrichs, 426 West 90th street, New York City. Evidently they were meal tickets, or something of that sort, and just torn off of those stubs. It looks like restaurant checks. This garbage is a detriment to the community and an expense. The people continually find fault and it is a detriment to the health, if you do not clean it up right away. The people come to Spring Lake for the pleasure of the beach and bathing. This interferes with their use of the beach. Three or four days at a time. Sometimes I have seen [800] it for a week at a time, one right after the other, so that they could not use the beach for a week. They cannot go on their bare feet, and most of them that go on the sand go barefooted. I have a lot of stuff here (indicating). This gives an address (indicating a wooden board): "61 West 23rd street, New York." I picked that stick up yesterday afternoon.

Q. What is the pole there (indicating)?

A. There it is. I got this pole among the trash on the beach. The letters N. Y. C. are burned into it on the bottom. I cannot get that at the top.

[801] Mr. Minard. (Reading.) B. P. & S., New York City.

Mr. Crowe. No. We have no such department. We do not mind being hung, but do not hang us for somebody else's sins.

Mr. Minard. There (indicating pole) is your own shovel handle.

Mr. Crowe. You are good at making up a case, but you cannot fasten that on us.

For Plaintiff—Horatio Clayton, direct.

Mr. Minard. The initials on this pole are D. P. S., N. Y. C.

The Witness. It is a department in New York City; there is no doubt about that.

I found that pole among the garbage. I have another ticket here (indicating). I found this ticket yesterday afternoon. It is Fox Square Laundry, 1471 Edgewater Road, and it has an address on it of 1475 Broadway, phone Dayton 2000. [802] Here (indicating) are some milk bottle caps; Burtining Milk Company, pasteurized at 109 Grand street, Hoboken; here (indicating) is one from Read's Union Dairy, 531 Waverly avenue, Brooklyn; and this one (indicating) is from Model Dairy, 246 Eighth avenue, New York City.

Now, we have one with the Department of Plants and Structures.

Mr. Crowe. There was such a department at one time.

Mr. Minard. That was Grover Whalen's department at one time.

Mr. Crowe. At one time. D. P. & S. does not signify Department of Plants & Structures. We use P. & S.

HORATIO CLAYTON. [803] On *direct examination.* I live in Spring Lake. I have lived there nearly all my life. I have no connection with the government down there at the present time. My business is real estate and insurance agency. I was connected with the municipal government as a member of the council for fifteen years, from 1913. I have had experience with the garbage on the beach. In my business we rent a great many houses, and, of course, represent our tenants, and serving them in a dual capacity, as a member of the local council and as [804] their agent, I have heard a great many complaints of the beach conditions. I visited the beach frequently, being called there as an official, and hearing the complaints from my tenants and those who were not my tenants, and I noted the conditions, as have been

stated by other witnesses. It has a decidedly bad effect upon the development of the community. I never but once identified objects in the garbage that had names and addresses showing where they came from. I never took the trouble to sort anything out. I was out with a couple of members of the council on some other business, and we stopped at one of the municipal plants which was being erected, and walked to the beach, which was badly littered with refuse, and just as we stopped, some article was picked up, which you have, I think, there (indicating). They were presented here before by Mr. Marucci. [805] That is the only identification that I have ever made.

DR. ROBERT D. PATTERSON. On *direct examination.* I live in Spring Lake. I am an osteopathic physician. I am the health physician of the borough. In any dealing with complaints to the Board of Health they come in through me. [806] I have nothing to do directly with the garbage on the beach. That is handled by the borough superintendent; he sees that that is cleaned off. The sanitary aspects of the situation come under my supervision only as people complain to me. People do complain to me. In the summer of 1928, it seemed that there was one continuous complaint. We had so many northeast storms, and the garbage was littered on the beach, it seemed like almost all summer. As soon as they had it cleaned up properly, it would be only a week or so and there would be another batch. And there would be a terrific odor from it—not when it was washed up so much, but after it would lay in the sun a day or so, the garbage and onions would have quite a smell. Among the garbage I have seen cabbage and onions and grapefruit and carrots and pineapple tops and dead chickens and dead cats, and I have seen a few dead dogs. We did not have the trouble during the summer of [807] 1929 as much as in 1928. We get this condition whenever the wind blows from the east or the

northeast. The material is brought in to our beach following a storm, and we have been pretty free from storms this last summer, except—

EDWARD E. HAYES. On *direct examination.* I live in [808] Spring Lake. I have lived there the year around since 1920—ten years. Before that I lived in New York City and various places. I would go south in the winter. My business at Spring Lake is managing a hotel, summer hotel, the Allaire Hotel. I have had experience with the garbage on the beach. My experience is complaints from the guests. Our hotel accommodates 200 guests, or a little more. We have a transient trade, more or less. [809] I suppose we have during the summer months we accommodate maybe a thousand or twelve hundred different people. I suppose there is probably $150,000 invested in the hotel. The attraction to the people is the beach only; that is practically— I have had many complaints. As a matter of fact, I think I have had people stop coming there on that account. It has been a matter of frequent complaint at the desks of the hotel. [810] It absolutely interferes with their pleasure. It makes it impossible for them to go in bathing or on the beach. We have a private beach.

FRANK S. BENNETT. On *direct examination.* I live in Spring Lake. I am a sheet metal worker. I am a member of the council. I have been connected with the municipal government about six years. I have lived in Spring Lake for [811] 29 years. I have been familiar with the condition of the beach for that length of time, I should say. Immediately following a northeast storm, we usually have a great amount of garbage and refuse come up on our beach. Our superintendent with his men usually takes care of it. In the way of growth or development or satisfaction of our guests, I should say it does not help our borough at all. I have no way of

determining otherwise. There is a great deal of complaint, so much so [812] that our summer residents at times, not feeling that we got the beach clear as fast as they thought it ought to be, requested the privilege of putting men on to help them, and they paid for them. I have never found any articles that were identified by names or addresses on the beach.

WILLIAM B. STUBBS. On *direct examination.* I live at Sea Girt, spending about half the time down here at the shore and about half the time in New York. I live at West 82nd street in New York. My business is the hotel business at [813] Spring Lake and Sea Girt. I operate the Warren Hotel at Spring Lake and the Stockton Hotel at Sea Girt. The capacity of the Warren Hotel is about 300 guests. I accommodate about 1,500 different guests during the season; that is not accurate. The dominant attraction that brings people to our hotel at Spring Lake is the ocean bathing. I am familiar with the garbage conditions on the beach. That has affected our business principally through the unfavorable criticism of numerous guests. They have frequently brought to our attention the presence of garbage on the beach, and other debris, but particularly the garbage, because the garbage, of course, is repulsive, and disgusting. The other debris they expect to find, perhaps, a certain amount of, at various times. This hotel [814] represents, roughly, several hundred thousand dollars in investment. It has no other means of support than these attractions of the beach. With regard to the Stockton Hotel, that represents an investment of several hundred thousand dollars. The attraction there is particularly the beach, because we are in a somewhat remote location, where the ocean bathing is almost the sole attraction. The Stockton Hotel accommodates approximately about 400 guests. We entertain during the year about the same number as in Spring Lake. These two

hotels are a mile apart. The garbage conditions on the beach [815] are practically the same. I would say that the effect of the garbage upon the Stockton Hotel business is about the same as it is on the Warren Hotel business. I have not particularly identified any articles on the beach with names and addresses on them. I did yesterday, after I was here yesterday morning. I found some eight or ten milk bottle caps with various New York City addresses. They had about seven distinctly different New York addresses.

GOODWYN. [816] On *direct examination.* I am the Mayor of Avon. Exhibits 167 and 168 are pictures of our beach as it is now, or as it has been for the last day or two. Those were taken the 14th. I picked up a letter there yesterday. I found this this morning amongst the garbage and the trash on our beach. [817] "Mr. & Mrs. Angelo Fazzio request the honor of your company at the marriage ceremony of their brother, Vincent Camilleri, to Josephine Sciaulina on Saturday evening, January 5, 1930, at 5 P. M." Then there is the name of the church and the address of the church, and then the address of the persons, apparently. (Reading.) "Reception to be held at Stuyvesant Casino, 140 and 142 Second avenue, at 8 P. M.," and the address above is 12th street, between First avenue and Avenue A, New York City. Our beach at the present time is in a very, very serious condition. This northeaster has not only littered the entire beach, but our south rock jetty, amongst the stones is all filled with garbage and decayed matter, and it is going to be a problem now how we are going to get that out of there, because if that is allowed to remain, that is right on the south side of one of our bathing beaches which is patronized very extensively in the summer season. Now, that is going to cost a lot of money, and how we are going to get that out from between the rocks, I do not know, because

the inshore end, where this garbage is, and all—the average tide does not come over those stones, so in the hot weather that is going to lie right amongst those rocks and create an [818] odor. A lot of those stones are very heavy, and we have also had signs on them, even in the summer season, that we do not allow anybody out on those stones. That is for the protection of our beach. This is a jetty that was built about three years ago, a rock jetty. There are two of them there, one at the north end of the borough and one on the south, and our bathing beaches are in between those two jetties. Now, we run our own municipal bathing grounds, and the maturity and interest on those bonds, we pay for that by the revenue of the swimming pool. Now, we will have to get a new location if we do not get this garbage out of that south rock jetty. From a northeaster we get this all the time. Now, I have been down there yesterday. I have walked the beach this morning, and we have just been informed a few minutes ago that a gentleman in this room has seen the condition of the beach. Otherwise I was going to ask you, if you had time enough, to go down and see it before we undertook to remove this from the beach. [819] On *cross examination.* I mentioned something about having a municipal bathing area at our beach. We do not own the riparian rights. The width of our beach from the bulkhead to the ocean is about 100 feet. Looking at Complainant's Exhibits 168 and 167, the distance between the bulkhead and the boardwalk I should say is about—the boardwalk is about in the center, between the water and the main bulkhead on the beach; about 50 feet; it is right about the center, as near as I can say. [820] The boardwalk is about 24 feet wide. The length of our beach at Avon is just about seven-eighths of a mile; it might be a few feet one way or the other; but I believe when it was built at that time it was seven-eighths of a mile, because the road was paved and it was given out by

contract to a contractor, and that was what the engineers gave as the length of the street, and the boardwalk is as long as the street. Looking at Exhibit 167, I should say the majority of the material is composed of decayed fruits, such as grapefruit and lemons, and this morning I took the trouble to look out there, and there was five dead chickens out there—

Q. What character of this material is the greatest in quantity there (indicating photograph)? Would you say garbage or timber?

[821] A. Well, garbage. That is my best judgment, examining this picture. I would not say, examining the same Complainant's Exhibit No. 167, that there is just as much wood and timber there as there is any other material. (Discussion of counsel.)

[822] JOSEPH MAYER. [823] On *direct examination.* I am Mayor of Belmar. I was Mayor in 1924 and 1925, and Mayor again since December, 1927. I have not been a member of the council or in any other capacity. I have lived in Belmar for 25 years. I have prepared data showing the resident population of our boroughs. The resident population is about 3,800. [824] Our summer population is about 25,000. There are about 4,000 in what we call South Belmar and West Belmar, and they take about 10,000 more people in there. They are just back of our town, but use our beach. They have no beach of their own. It would appear as if it was all Belmar, but these boroughs are separate, but they have the free use of our beach. The total population, including all the people who use our beach in the summer is about 35,000 people. Our community is largely residential, hotels and boarding houses. We have some industries there. We have the shirt factory, a dress factory, a braid mill, and the gas works. [825] They are usually along the railroad track, in the back part of our town. Those industries go towards supporting the winter pop-

ulation of our community, but it does not support them all. They find employment along the towns. I do not know how many winter industries there are at Belmar.

The principal attraction that brings summer people is the beach; also the river, but the beach is the predominating attraction. They use the beach for bathing, and that is of prime importance, and that is of the essence, because that is recognized as bringing all the people there. The river is used for this, but—there are quite a number who bathe in the river, people in that section of the town, because the river is shallow and there is a very excellent place for children to bathe in, and they get the salt water there the same as at the beach. And then we have the wading and the [826] other activities on the river that are enjoyed there. We have hotels and boarding houses in our borough. The summer hotels and boarding houses run about $700,000 in value. The total valuation of the borough is $7,100,000. We have altogether about 2,100 buildings, including the hotels and residences. Summer homes, there would be in value $2,600,000, and winter homes about $3,840,000. We have built a boardwalk. [827] Our boardwalk is about a mile and a half long. The boardwalk itself, the nearest we can gather, runs about $50,000. The piers and jetties that have been built there—and Belmar has been exceedingly active in that—our piers and jetties constitute an item of $525,000. We have bathing pavilions and clubs. The bathing pavilions on the beach owned by the municipality are $110,000, and the principal club on the beach is the fishing club, running about $50,000. The river front purchase was purchased. They began the purchase and the condemnation of the river front, to take it over by the municipality two or three years ago, and in 1927 it was concluded, at a cost of $150,000. That is turned over to the public use, and is being used constantly now. The length of our beach frontage is a mile and a half. We have fish pounds on our beach. [828] It is an industry conducted

by Mr. Wooley. It is a private enterprise. Mr. Wooley is here. We have had the experience of the nuisance that has been there, and our attention is being constantly called to the condition of the beach, which deprives the people from its use whenever we have these storm periods, when garbage and refuse would come up on the beach. We have had garbage on the beach, probably, as long as I can remember being around there, off and on during the year, and we have been bothered about it just as much, probably, in my first administration, as we were since that time. But the thing became, with the increasing population coming to the town—why, it became more and more a duty of the governing body to take care of the garbage situation. So it became more serious each year. In other words, the towns were getting more people and greater numbers were coming to the beach and the resort, so that the garbage became more and more of a question of consideration with all [829] officials and principally our own. We take care of this garbage by the street cleaning department; it comes through the street cleaning department. The superintendent will be here. He will tell you just what he does with it. They largely cart it away. On these extreme times they are obliged to cart it away. Last year, 1929, we used up our appropriation there of something about $2,000. And each year it has been somewhere about that neighborhood. I think the year of 1929, beginning with the extreme time in February, cost us a greater cost during that year of it than previous years. Probably it ran about $1,500 then; somewhere about that. I have made personal inspection of the garbage on the beach. I get there very frequently. My home is right near the beach, or was for a number of years, and I go down very frequently, and, in fact, during my term I dele- [830] gated some of our officers to gather and get the material and, in line with the activities of the towns here, to try to get something

done. And we had it gathered together, and quite some of it was delivered to the Senator to take up this from a State standpoint, and others, together with photographic copies, were delivered to the War Department, at their request, by reason of telegrams being sent us, to advise them when conditions were bad on the beach.

Q. I want you to look at some of these pictures that Mr. Martin took, and I ask if you recognize those pictures as showing conditions that you had of litter on your beach (handing photograph to witness)? Do you recognize those pictures as pictures of your beach front?

A. (Examining photographs.) Yes. That (indicating photograph) was a condition that we observed, and I was there, and saw it exactly as is shown by the pictures, and sent immediately to our Chief of Police, who got the photographer and went down and got these views the same day.

They were taken under my direction at the time. [831] The date they were taken is on the back of the pictures. That was February 9, 1929. There is not any question that the question of garbage on the beach is a serious detriment to our town. Many people just will not go on the beach, and they will not take their families there, when the garbage is serious, and a lot of them even object to going in when there is just a reasonable amount of the garbage there. But the principal effect seems to come from the complaints from the hotels. The residential people get annoyed and phone you and object to it and ask if something cannot be done, and to hurry cleaning, and at times your whole department is used, and still it takes a few days to get it away.

Well, the residential people will probably put up with that, but you will hear from them quite often. But the hotel owners complain seriously, because their guests are subject to go and they lose—

I mean the guests have a more limited period of stay, and they just pack up and go away, and the [832] hotels

are seriously affected, because the season is short, and their whole business is really dependent upon the beach itself. Because those people who come there, that is where they enjoy it. And when the beach is in that shape, they just will not pay the rates there to have the privileges, and the most serious complaints come from that source.

This is a matter of constant complaint every year. It is a general condition. When you get a northeast blow you will get garbage all the time. The garbage is out there, and it all depends upon the direction of the wind whether we get it or somebody else gets it. (The photographs referred to were received in evidence and marked "Complainant's Exhibit No. 174" to "Complainant's Exhibit No. 181," both inclusive.) [833] As to having identified names and addresses in the garbage I do not remember the individual addresses, but I have identified, oh, very often, the addresses in New York and Brooklyn, at times a great deal from the Brooklyn end. I have made complaints about this garbage to the War Department, and also to the State through the Senator. The War Department promised us, they have sent telegrams to me several times to watch the condition and to advise them as we observed it, and to get any information we could, and we did that whenever it would occur, and in one particular case we sent them the material and the photographic views. [834] We got an acknowledgment for it. They said they were trying to do what they could to bring relief in the matter. Our experience is the same as that of others. We have kept at them since. Our complaints to the War Department did not result in the disappearance or discontinuance of the garbage. On *cross examination.* We own the beach, but not all the beach. There is a small piece of the beach near the inlet that is privately owned, and there is a small piece at the other end that is owned by Mr. Wooley, who has the fish pound

business. The land under the water in front of the beach is owned by the borough. I referred to objects found upon the beach [835] having the names of New York concerns. They were bottles and cans and the like. The item of $2,000 that I testified to is money appropriated exclusively for beach cleaning. That embraces cleaning off any material that would come on the beach at any time. There are sometimes when material comes up—quite a lot of bottles, and probably sticks and so on, that will be taken off immediately. The $2,000 includes the daily cleaning of the beach of all materials. I would say garbage alone would take probably much of half of that, or probably near half of it, but the garbage with the bottles would take the great per cent. of it. We are very active on the bottles as well, because we have quite a bit of trouble frequently. This year, for [836] instance, we had a first aid squad down there that is called almost daily to somebody who has cut their foot. The part that the borough owns would be out to, probably, what would be low water mark. In parts of our beach it varies from, say, 500 feet back to, probably an average of 200 feet. Inland from the beach we would run back about a mile and a half. This mile and a half does not include West Belmar. [837] To get at that, Belmar itself is like a peninsula. The river runs along on one side, away back to the borough limit, and the ocean is on the other side. And the limitations of West Belmar there—I would say West Belmar would be probably a mile square. West Belmar is a part of Wall Township. And the people from West Belmar come and spend the day on the beach and South Belmar as well.

Q. South Belmar as well. I suppose they bring their drinks, like coffee and tea and milk?

A. There is very little—no, not from West Belmar. There would be none from there. The only time we would have anybody who would bring anything to the beach

would be probably from out of town, and that is very little, because we have stopped on that entirely. Our police department prohibits it entirely, and anybody who is picnicking there is picked up right away. They are not allowed to eat lunches on the beach. [838] Some will eat there on the beach, but occasionally we will pick them up and stop them. This is a borough regulation. That has been in force, I do not know how much before my time, but it is in force in my time; that is, since 1924. We always have been troubled with it. There is always somebody who will go down there and start picnicking, and that is a source of trouble, and we have gone so far as to put containers all along the beach and make them put up their Sunday papers, and things of that kind, and we provide constant police protection to prevent them and provide containers along the beach. This regulation had its origin in the necessity of preserving the cleanly condition of the beach.

[839] On *re-direct examination.* I am sure this garbage I have described as being on the beach could not come from the lunches of the picnickers. They did not come there.

Q. Do you have any garbage on Ocean avenue? Is any of it carried onto Ocean avenue?

A. Yes, sir. After storms, our beach is high, and we get it cleaned on the street. It goes over to the property across the street, on private property. [840] It goes inland as far as the Yacht Club. The Yacht Club is a mile and a half up the river. We find it that far inland. We have trouble with bottles and glass on Ocean avenue from the garbage and bottles. We have to gather it up. Bottles and things of that sort float over there.

For Plaintiff—E. Donald Sterner, direct.

E. DONALD STERNER. On *direct examination* [841] I live in Belmar. I am a member of the Senate from this county. I have lived in Belmar all my life. I served two years in the Assembly in 1928 and 1929. I am in business in Belmar, lumber and coal and mill-work. I sail a boat. I have encountered this garbage on the beach or elsewhere since my boyhood days. In view of the fact that I spent my [842] boyhood days on the beaches, and experienced at different times during my life in my bathing—I am a great enthusiast for salt water bathing—have experienced the painful pleasure of cutting my knee on one occasion on one of the broken bottles, and running a nail in my foot on another occasion, on a piece of driftwood, and then, of course, I have witnessed the garbage and the refuse in quantities on our beach. There are dead animals, and the fruit and vegetables and driftwood, and the dogs and the cats and the chickens, and all the other varieties, and of course, included in that I have witnessed on numerous occasions at different places on the whole beach front of Monmouth County which, naturally, I am interested in as a member of the legislature in making inspection of those beaches, and in my subsequent sponsoring of the various resolutions in the legislature in connection therewith, I have observed, of course, those conditions and the printed matter, in the form of hotel menus and restaurant bills of fare; the hotel menus, from New York hotels and restaurants. [843] I have seen articles from Sthurtz Trucking Company, slips and theatre tickets, and articles of that nature. I have been offshore in my boat and encountered the garbage. I have gone out, of course, various distances, but particularly two or three miles offshore is when I encountered it, and sometimes more than that, dependent on how far up the coast we went, rather than down in the other direction. I have never been present when I saw them dump it. When I have seen it several miles out there just seemed to be large acreages of

garbage and refuse floating together and, naturally, of course, anybody who owns a boat would try to go around those masses. On one occasion I did bend one of the plates of my propeller on a piece of driftwood. I encountered these areas of garbage floating in the sea quite often, especially when the fishing is better up at Seabright, and those districts. You see, sometimes the fishing is better to the southeast, and in that direction we do not encounter it as much as we do in the northeast. It is out in the northeast direction [844] where we find the garbage and where it comes from. I think New York City itself is more in a northerly direction. I might also mention, in connection with the garbage and refuse, that I own property on Inlet Terrace in Belmar, situated about half or three-quarters of a mile from the inlet, and on the high flood tide that we get with the northeast storms, I have found bottles and trash, and then some of this printed matter deposited on the rear end of my property on Inlet Terrace. That is about half or three-quarters of a mile up the inlet from the mouth. It also gets on Inlet Terrace Drive. That is a public street. I have seen the conditions referred to by the Mayor on Ocean avenue. I have experienced several bottles getting under the tires. On these northeast storms, they are [845] generally on a flood full moon tide, and with the strength and force of the waves there is a great deal of that. It goes over the bulkhead and over into Ocean avenue, particularly, where the sand is built up. I have even seen some of it go to A street, which is a block from Ocean avenue. Of course, it runs down the gutters, as the street drains toward A street. I have found of the rubbish on Ocean avenue, driftwood, and, of course, the bottles, and of course quite a little grapefruit, particularly. I never realized that there was so much of it used. But they seem to predominate particularly.

For Plaintiff—Brazil Woolley, direct.

BRAZIL WOOLLEY. On *direct examination.* [846] I live at Spring Lake. I am in the pound fishing business. The business is at Belmar. There is an $18,000 or $20,000 investment in our pound fishery. The business has been there, I do not know somewheres along about 28 years. I have been connected with it, roughly speaking, about 18 or 20 years. A pound—some people might call a trap. It is the basis of what we call a weir, that leads from inshore generally out, and there are four bays that gather the fish into that, and behind that there is what we call the pocket, where the fish is led to, and that is where we get them from. That is constructed of poles driven in the ground, [847] and with nets strung around like fences, constituting the entrance and walls of the trap. We have one section which we raise, which is a pocket; we raise it from the bottom, and that brings the fish to the top. They are pulled up; we have what we call a scrap-net, and we kind of scoop them out with this scrap-net into the boat, unless there is a small load; then we can dump them right on deck. As to what a catch amounts to, in dollars and cents, a year, I have taken from the year 1928. We have not made up the 1929, but the 1928 runs around $29,000, and in 1927, $41,000; 1926, $44,000; and from 1921 that goes to $55,000. Those are amounts for separate years. [848] As to men employed in this industry, in the year 1928, we had 23 men; the year 1927, 24 men; 1926, we had 29 men. It runs along about like that. We have encountered difficulties with the garbage in our fish pounds. A few years ago we used to get fish through a northeaster, and the twine would not be all torn to pieces, and it seems to me every year it is getting worse. The nets are torn more after the northeasters in later years than they were in previous years. And of course, that interferes with it. It used to be so that if you took it after storms you would get better prices. But when they are turned out that way, you do not get no fish, and

the fish goes away. As to what it is that tears our nets, you may call it garbage, crates, and things of that sort; anything with nails in it; especially like bed springs; if that gets into them, that tears them considerably; things of that sort. [849] Garbage and refuse is all together. You see it out there. We have a north current and a south current, too, with these wind storms, and you take it on a north current coming down the beach with these things coming in there, and of course the twine cannot stand it. It wipes everything out, and sometimes poles goes with it. I have seen the stuff floating in the ocean. I have not paid much attention to how far out I have seen it, only around the town there. I have never been out where it is dumped.

What this damage represents, this damage to nets, etc., each year is a thing that is a pretty hard matter to figure out. The only way we can ever figure on it is like we generally have stuff on hand to fix it up, or patch it up, or something of that kind, and when it is torn out we have to keep [850] on getting it. It interferes with the quantity of our catch, absolutely; there is no question about that. This condition seems to be increasing as the years have gone by, this trouble with garbage and refuse. Of course, it is a hard matter to keep tab of everything in the ocean there. Now, weakfish we used to catch right along in the summertime. Now, those seem to be diminishing, whether it is from this garbage I do not know. Even this last fall we had practically no weakfish to amount to anything. And there are other varieties the same way.

But I have noticed it mostly myself on the weakfish. The only time last spring it kind of got me very forceably. It was right after a northeast storm, and we were out there fixing our poles; and I had a little boat there, and I was running around there, and there was a calm came that day, and while I was there you could not help but noticing it, it was so calm; it was like what we call a mill-

pond, and you could see the scum and it looked filthy. What I saw [851] was composed of oranges, and all kinds of dead matter—like you can imagine; it was chickens and things of that sort out there. Of course, there was not any bulk of it out there, unless once in a while; all along there as far as I could see; different things.

I suppose you could get any variety out of bad stuff that you wanted to.

Q. What effect does that have on your fish?

A. Of course, I have not got anything that I could go right down to catch, but it does not seem to me that a fish could live very easily in that kind of stuff. I know human beings would not pick out air that was polluted like that water was.

Q. Do you see any effect on your amount of catch when this garbage is floating around there?

A. Well, of course, it is a hard matter to figure that out exactly. You see, when the fish are there, you catch them, and when they are not there, you do not catch them. And it would be a pretty hard matter to trace that back and forth.

On *cross examination.* [852] You would not call the shape of the fish pound circular or rectangular. Well, certain portions of it might be. The pocket you might call to a certain extent rectangular, or nearly on the square, perhaps. As to the depth or distance of the fish pound along the shore, its westerly end or side, that would be—it would go, I suppose, from 20 to 25 foot out, onto about 35 foot in the deepest part of the water. I suppose each pound would be about 1,200 or 1,500 feet, each one. From the inshore to the offshore each one extends outward into the ocean a distance of 1,500 feet. [853] We have two pounds in one place and one in another. One of them is in front of Spring Lake, and our place of business is in Belmar and we have two of them

in front of that. To operate these fish pounds we have to get a State permit.

Q. And as I understand it, a fish pound is from 25 to 35 feet in width, and extends outward into the ocean about 1,500 feet?

A. No, I would not say so. I referred to a certain part of the pound as being a pocket and having an opening therein. The opening faces toward the inshore. There is where the fish go in. The fish [854] naturally go up and down the beach, but strike the weir, and then they go offshore; if there is any of them that goes inshore, we cannot catch them, but those that go offshore into the pocket.

Q. What is the distance between the pocket and the shore line?

A. Well, I could have got that for you.

Q. Well, approximately.

A. I do not know. Do you mean from the inshore or the pocket to where? I do not know exactly how far the pocket where the fish are caught is from the shore. From the shore line it has got to be a quarter of a mile from the shore line to the inshore pole. And then from there it will be about 1,200 or 1,300 feet, something like that. I cannot tell you exactly.

[855] This enterprise is conducted entirely with private capital. The State or the United States does not make any contributions, in the shape of financial investment. My father and I together own the nets and the poles and everything connected with the fishing industry.

There is no one else interested in any of these three fish pounds other than myself and my father at the present time.

On *re-direct examination.* This land where [856] we have our pounds belongs to the government. I do not know whether it is the State of New Jersey, the United States, or what. I get my license from the State of

For Plaintiff—George R. Martin—Inslee M. Minard, direct.

New Jersey from the Fish & Game Commission of the State of New Jersey.

On *re-cross examination.* We pay a license fee.

[857] GEORGE R. MARTIN. On *direct examination.* I live in West Belmar. I recognize Exhibits 174 to 181, both inclusive. I took those pictures on February 9, 1929. They show the condition on the beach as it was at that time. [858] That mass that the picture shows here (indicating) consisted of fruit skins, general rubbish, bottles, cans—almost any floating matter at all.

Q. Did you see any articles in there that had identification marks on them?

A. Only trade names, sir.

Q. No addresses?

A. Only those of the manufacturer. I saw nothing that would indicate the address of the receiver or the sender of an article. At that time I did not have sufficient time to examine it.

[859] INSLEE M. MINARD. On *direct examination.* I live in Point Pleasant Beach, New Jersey. I am a grocer. I am a resident of the beach. I live about 400 feet from the beach. I have property along the beach front. I am familiar with the garbage conditions on the beach.

[860] Q. I show you a few papers and ask you where they came from (handing papers to witness)?

A. (Examining papers.) At Point Pleasant Beach, November 18, 1929.

There were several papers and all kinds of garbage on the beach at the time I picked these papers up. By "all kinds of garbage," I mean orange skins, grapefruit, lemons, bananas and pieces of bread. This was tied up (indicating package). That was the way you found it. I picked it out of the water before it got in on the

beach, yes. Here are twelve bundles of checks, with the bank balance and vouchers around each bundle (indicating). Here (indicating) are the bank account statements of the State Bank, New York City, and the name of the person who has the account is the Jacobs Woolen Company; and these [861] are cancelled checks, May 16, etc., 1924. They seem to be about 24 checks, May and June and along there. Now, the Jacobs Woolen Company, it says, 246-248 Terry street, New York. That is something I found the same day. These are Ida's Beauty Parlor, 101-103 East 14th street. It is a bundle of orders or charge slips, cash slips. Here is something from Weyman's Ice Cream Parlor, 240 Eighth avenue, New York City. That was the same time. Here is something from the Empire Cafeteria, 79 West 125th street, and 306 Lexington avenue. That is something I got at the same time. Here is another one from 71 Spring street. Here are some more of these cafeteria checks. Here is one from the National Laundry, Manhattan Plant, 240 West 141st street, at Fifth avenue, and the other is Bronx Plant, 1471 Wilkins avenue, Bronx, New York. That was at the same time. [862] Here is one from Major Laundry Service, Inc., 313 Terry street, New York. That is all in the same lot. Here is something addressed to some laundry, a part of a postcard, 71 East 11th street, New York. Some of these are only parts. Here is one of W. H. Sor to the Silverstein Fruit & Produce Company, 192-194 Read street, New York. Here is a return receipt from a registered letter from the United States Post Office, addressed to H. R. Leckner, 110 Williams street, New York City. Here is a billhead from Julius H. Kaplin, Wedding Rings, 106 Fulton street, New York City. Here is the Green Cafeteria, from Bowery and Delancey streets. Here is a merchandise ticket with the style number and piece number and yard contents, from Frank T. Lawrence & Company, New York. Here is, "Gentleman's Ticket, Grand Annual Flower Fes-

tival of Sada y Sus Contornos Casa Galicias Hall." Here is another part of the ticket, or the stub of it. It has the same name on it, Ticket No. 354. This is marked March 30, 1929, on this ticket, 255 West 17th street, New York. [863] Here is a swiss cheese ticket from 2 John street. Here is another printers' advertisement, Burt Brothers, 414 Madison street, New York City. Here is Witty's, 129 West 42nd street. I cannot make out any more of that ticket. Here is another Green Cafeteria ticket, from Bowery & Delancey streets. Here is a United States postal, or some kind of a post office announcement to Wong I. Gong Company, 9 Doyer street, New York City, U. S. A. That seems to come from Hong Kong, addressed to Mr. Wong I. Gong. Here is a return card for the Sanitary Laundry Service, 349 West 26th street, New York, N. Y. Here is a little ticket from the Cedar Island Oyster Company, at Cedar Island, Green Point, Long Island, addressed to Pecanic Bay Depot, Fulton Market, New York City. Here is a tag from Lloyd Sabando, Pier 95 foot of West 55th street, New York. Here is another card. "This is a self-service wet wash company, 228 Monroe street, near Scammell street." It does not give any address.

Mr. Crowe. There is a Monroe street and a Scammell street in the City of New York.

[864] Here is a cafeteria ticket from Bickford's, 198 South street. Here is another ticket from the Rich Agency, Inc., 449 West 41st street, New York. Here is a ticket, "Department of Hospitals, Gouverneur Hospital, Gouverneur Slip. Our-Patient Department." There is a number on it, and, "Always Bring This With You." It is evidently an identification card for admittance to the hospital. There does not seem to be any address on there, but I guess Gouverneur Hospital is in New York. The ticket bears a number, stamped on by means of a numbering stamp, and the number is 61,743. I found all of these things in one garbage mass from one storm.

For Plaintiff—Charles J. Markus, direct.

On *cross examination.* [865] I picked those up just before they landed up on the sand and beach, but the rest of it was picked up about 50 feet from the water's edge, where the tide had been on the sand. That date was November 18, 1929.

CHARLES J. MARKUS. On *direct examination.* I live in Belmar. [866] I am the Commodore of the Yacht Club there. I have been connected with the Yacht Club for 7 or 8 years. I have encountered garbage at sea. I have been out fishing quite often, and many times saw it out at sea. I have not seen the scows dump at sea. I have seen the garbage in the sea, I should say, 7 or 8 miles out, north and south. This way up (indicating) and down. We usually drift for fishing north and south. Many times we have encountered this slick which probably was a mile long and half a mile wide. By "slick" I mean it is a sort of an oily surface, with refuse of all kinds in it, boxes and bananas, and all that sort of stuff. It contains considerable quantities of crate wood and wood strips, boxes and crates. We have often had a mattress [867] out there. I have hooked into a mattress. There seems to be a lot of electric light bulbs. And the usual banana peels and orange peels. It does not interfere very much with our navigation, because we keep out of it. But we encounter it a great deal, because when there is a really hard blow, we catch it at our basin at the Yacht Club. We have a basin that extends on out from the Yacht Club, about 150 feet long and 125 feet wide, and that has a sort of a pier at both sides, and in it we have deep water, and at the end of these piers we have a large ramp, probably much wider than this floor (indicating,) where we set our people to watch the moving pictures or to watch the races, etc., which is about a foot below our piling and dock; so that when this stuff comes in on a northeast wind, when it goes into this position (indicating), it

is a natural thing to catch it in there and throw it on top of this ramp. So that when this stuff comes in, we must start right in and get it cleaned up before we can have anything there. It continues to pile up there [868] when there is a northeast wind. It has to be a pretty good northeast wind and a pretty high tide to bring it up on this ramp. As to how long we have experienced this garbage condition along the shore there. I have been at Belmar eleven years. And I would say that I started fishing about 7 or 8 years ago, and pretty near every season you will hit it three or four times. I fish the surf a great deal, especially around Sea Girt, and the bluefish generally run, unless there is a good, heavy sea on, in a northeast blow. And the bluefish, you have got a fish about a foot below the surface of the water—that is, trolling them in. Now, when all this debris, boxes and bedding is there, you must stop fishing. There is no possible chance of landing a fish then, and I have seen at Sea Girt a hundred men all sitting around watching for the tide to change to carry off this stuff again, so that we could start to fish. And that has been for years. I have never identified any articles among the garbage. I never gave it thought, much thought. I was never looking for anything.

[869] RUDLPH WIEGER. On *direct examination.* I live in Belmar. I am working for the borough—laborer. I do all kinds of road work. At times I help clean the beaches. That is a part of my duties. [870] We have all kinds of stuff washed up on our beach, like lemon skins and grapefruit and orange peels, the general line of garbage that has been described here a good many times. That (indicating) is some cans that I picked up. I got these at Belmar Beach, amongst the garbage on February 7, 1928. Here is something from Alice Foote McDougall, Tea Balls, New York. I picked that up right in with the garbage. Here is a Shafer coffee can,

For Plaintiff—David D. Bergman—Alonzo Haley, direct.

Frank C. Shafer, Boston & Syracuse: This bottle has New York on the bottom. [871] I do not know where these cans came from. They were merely in the garbage and I picked them up. They have New York addresses, but they are things that anybody can buy and carry with them. I have never identified other articles. I have not seen our beach for a few days. I could not say how it is now.

DAVID D. BERGMAN. [872] On *direct examination.* I live in West Belmar. I have lived there for ten years. I am a laborer for Belmar Borough. I help to clean the beach up when it gets filled with garbage. I have here (indicating) some milk bottle caps that was picked up out of a few thousand. They represent different pasteurizing plants in New York City. Here (indicating) is Sheffield and here (indicating) is a Borden's—a great many of them. There are 30 or 40 milk bottle caps here. That is one of Borden's, and says to have [873] been pasteurized at Pine Plains, New York. These paper carriers (indicating contents of another can) from Bloomingdale's Pet Shop, Lexington avenue and 59th street, New York. Gold Fish, etc.; two of them, both the same. Here are a couple of Sheffield Farms milk containers. That is the same address we have had, 1045 Webster avenue, Bronx, two of them.

ALONZO HALEY. On *direct examination.* I live in Belmar. I am street superintendent. [874] I have charge of the cleaning of the beaches. I have been employed at Belmar since 1916. I worked for the borough as laborer for four years. Since 1920 I have been street superintendent, and, of course, I have had to go down and have the men take the stuff off the beach and about three or four times a year we have very serious storms, and we have to clean it up and take it away. And last summer, during July and August,

we had so much glass bottles that we had to pick them up and cart them away with trucks, and we had to continue on Sundays even, and do it early in the morning. Taken on the average, from 8 to 12 men were employed in that work. I could not exactly say how many loads were hauled away, but I should judge they had two trucks carting, and they carted about ten loads a day. They were at that job with the bad storm two days and a half, [875] with both trucks working at that rate. We have had the garbage condition more or less since I have been working there, since 1916. I have never identified any articles among the garbage with names or addresses on them so I could testify to them.

On *cross examination.* Our trucks carry this garbage out near Farmington, out to the contractor's place, near the borough. That is six miles from the beach. It is six miles out there and back, three miles out and three miles back. While we were going out with the load, we would have big containers there, and we would [876] have big loads ready by the time they got back, and we would dump it right in the truck, and the driver would go right on with it. This was a motor car, a ton and a half truck, just ordinary dump trucks. Our beach is a mile and a half long. In its widest part I should say it is 150 feet, probably.

ANTHONY E. WICKHAM. On *direct examination.* I live in Seaside Park. [877] I am the Mayor of the Borough. I have been Mayor since the first of the year. I have been connected with the borough government off and on, about four or five years. I have lived at Seaside Park for the last ten years. It is a summer community, resident—all residences and hotels. There are six hotels there. It is both a renting community and a community of cottage owners. I should say one-third rent and two-thirds own their cottages. The winter population is

about 500; the summer population is over 5,000. Our population is almost entirely a summer [878] population. The assessed valuation of ratables in the borough is $2,600,000 this year. Last year it was $2,000,000 and about $400,000. I have no figures to show how much of that is in hotels or boarding houses, and how much is in private homes. We have spent money for boardwalks. We have a mile and three-fifths of boardwalk. I should judge around $50,000 is invested in it. We built what we call a parallel jetty there. We have had some going out into the sea, and we have taken them out, and we have had more success with what we call a parallel jetty. It is similar to a bulkhead, only it is not solid. We have expended for those purposes in the neighborhood of $305,000. [879] We have one bathing pavilion now, privately owned. The attraction of Seaside Park is the bathing and the boating. That is all. Our beach front is a mile and three-fifths long, the same as our boardwalk. It runs from one end to the other.

We have had difficulty down there with the garbage quite a bit. Well, after every storm it means that we have to put the gang down there cleaning up. We appropriate $600 a year for trucks that is hauling it away. Then we put on six life guards there for four months of the year that keep the beach cleaned up, [880] the part where the people bathe. That is part of their duty. We have quite a bit of difficulty there from interference with bathing on account of the garbage. There is all kinds of garbage, and the people refuse to go in when the garbage is there, and it means that quite a few of them go out of town, especially those in the hotels and boarding houses. Then there is considerable broken glass there, bulbs and bottles that wash ashore.

Q. I have here these large pictures, Identification Nos. 115, 116, 117 and 118. These are marked Seaside Heights. What is the difference between Seaside Heights and Seaside Park?

A. Just across the street. These pictures show our beach in Seaside Park as well as theirs.
This picture, Identification No. 117, looks [881] north. This is our borough here (indicating). This (indicating) is in the borough. All of the boardwalk shown in that picture is in our borough. That starts on the edge of the garbage. This Identification No. 115 I think is up more in the Heights. As to Identification No. 116, we have a beach similar to this. There are no identification marks there. But our beach is the same thing. [882] You see, it is really just one town, with a street separating it. The dividing line is Porter avenue. Those pictures represent the conditions as I have seen them within the last few days.

Q. These purport to represent December 13th, and not this time?

A. Previous to that, but we have often had it in a similar condition.
The effect that all of this has upon our community is a general depreciation of the property there, and holding the town back in general, by people keeping away from there. There are no drawbacks or difficulties in our location along the shore outside of that, the condition of the beach. That is the only drawback we have. [883] I have never identified offhand any articles in the garbage which would show where they came from. I have seen bottles there—some prescription bottles from New York, with labels on them, but I could not swear to where they were; they simply come in a great deal in the fall along the beach there. I go fishing. I think the garbage has a tendency to drive the fish away. Generally, when the garbage is coming in, you can not fish at all, because it tangles up in your lines, because there are boards in there, and crates and baskets, and all that sort of stuff. Fishing is carried on on our beach to a considerable extent. We have people come there from all over the State, practically—up in Jersey City and Red Bank, and all up

there; all along, I judge there must be about 25 fishing clubs on the beach there in our municipality. That is, they have their places below us, on the Phipps Tract, the houses, but they leave their cars in the garage there, and start out, and have what they call [884] "beach flivvers," that is, a cut-down Ford, and run down the beach in that.

On *cross examination.* It is the driftwood that interferes with the fishing, light wood that floats and hooks the line; and the garbage to some extent, too. Because you fish—or we do—with squids, that has no hooks, but simply a squid, and you run on a lot of garbage when you hook in. This squid travels near the surface.

AARON WILBERT. On *direct examination.* I live in Seaside Park. [885] I am borough superintendent. I have been borough superintendent since 1915. I have lived at Seaside Park for 31 years. I have the cleaning up of the beach. I am familiar with the garbage conditions down there. I have encountered that situation, I would say for the last ten years. It is increasing in quantities of garbage. We cart the garbage stuff off, and the wooden stuff we burn, and take off the ashes. We appropriate $600 a year for the carting of it, but sometimes it runs over the budget of what we appropriate. It consists of—about the same as has been testified to, [886] for boxes and things. The most offensive material that I get in there is chickens and cats and dogs. People will not bathe in it, when the beach is in that condition. We have no other attraction at Seaside Park than the beach. The people come there principally for bathing. The people will not bathe when that stuff is washing in on the beach.

Q. For how long a period of time does it affect bathing?

A. It is according to the storm; according to how the weather is. If the wind is a northeast wind, the people

will not bathe in the ocean. I have not identified any articles by names or addresses found in the garbage.

[887] CHARLES R. ZACHARIAS. On *direct examination.* Here (indicating) is the result of a trip I took on our beach last Sunday morning. There is a list of what I found, and there (indicating) are the vouchers. And here (indicating) are photographs. I took these. [888] We found many of these identifying pieces, cards, printed matter, and so on, but we only took out, to make up this list, one of each kind, and where there were duplicates, we discarded them. This list (indicating) gives the identifying marks on each article we found, with the name of the company and its address: They are all New York City addresses. (The list referred to was received in evidence and marked "Complainant's Exhibit No. 182.") Here (indicating) is some New Years celebration, 1930. All of these things are included in that list. Here is a coat hanger. [889] On the same day I took these pictures. That (indicating) is Loch Arbour and Allenhurst. The name of the place and the date is on each picture. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 183" to "Complainant's Exhibit No. 187," inclusive.) Mr. Chamberlain, from West Allenhurst, was with me at the time I picked this up on the beach. These pictures represent the conditions as I saw them last Sunday morning between 11 and 12. They represent Exhibits 183 to 187, inclusive.

On *cross examination.* I took these pictures. [890] The camera I used was a Panorama Kodak taking that size picture. It was a two diameter enlargement. Looking at Complainant's Exhibit No. 184, that (indicating) is a piling that has been carried from some point on the ocean. This other piece of lumber or timber here (indicating) is a log 10 or 12 feet in length. That piling I would say was, possibly, 20 feet.

For Plaintiff—Winslow M. Brackett, direct.

Q. Looking at Complainant's Exhibit No. 183, there are three piles shown about the middle of that picture, without any connecting board on top, or at any other point. What are those piles there?

A. Above the sand, I would say they were about six or [891] seven feet. They are the remains of a pier or jetty that has been swept away.

This particular photograph, I saw more bread, rye bread and brown bread, the coarse bread, such as Hebrews and Italians use, than any other portion of the beach. There is also shown there a considerable quantity of boards and boxes and crates and barrel tops. There was one crate top that I picked up there come from Swedesborough, New Jersey, addressed to a firm in New York. That beach at Loch Arbour is approximately 600 feet. Just about half is included in photograph, Complainant's Exhibit 183. There is about 300 feet here (indicating). Exhibit 184 is the other part; this is looking south (indicating) and that is looking north [892] (indicating). No. 184 is looking south and 183 looking north and is the part of the beach on which there was the greatest deposit.

WINSLOW M. BRACKETT. On *direct examination.* I live in Belmar. I am Chief of Police of Belmar. I was such for two years; then a lapse of a year and a half, then two years more. I have been connected with the government altogether for four years. [893] I have lived in Belmar for six years. I am familiar with the garbage conditions on the beaches. I come in contact with it by being chief of police down there. I have to see that my men are on duty and on the boardwalk. That is how I come in contact with the garbage, being on the beach. The garbage is very thick at times; you could not hardly put a ten cent piece down there the last storm, I remember. That was in February. I think I have pictures of that. Mr. Martin took them

It was very thick. You could not walk down there without stepping on some of it. The offensive element of this garbage is decayed fruits of all kinds; dogs and chickens and a little of everything. As to identifying anything with names or addresses on it, [894] I picked up a lot of papers. I think they were shipping bills from some dock in New York, and I sent that to Mr. Sterner, and Mr. Sterner turned them over to the Governor, or to the War Department. I do not know what he did with them after I turned them over to him.

MRS. MARGARET D. PYLE. On *direct examination.* I live in Allenhurst. I am borough clerk. I have been borough clerk for six years, about. I have lived in Allenhurst for 25 years. [895] Allenhurst is strictly a residential community, used chiefly by Newark and New York City people who own homes there, which they use just for summer residence. We only have two hotels. The rest of the town is really nothing but homes. This is a list of the names of some New York City citizens who live in our borough in the summertime. These (indicating) are property owners from New York City. They own property there, and we have a great many more that just rent property there in the summer. There are citizens of the City of New York that own summer places in our borough. Is Charles Whalen on that list? You see, my secretary wrote that when I was not there. She took those names of property owners, and there was no mistake made, but she may have left some of the names off that are not famous—I see that she has his name on this list (indicating). [896] I do not have to check back this list. All I have to do is look them over, and I know they are all Allenhurst property owners (examining paper). Those that are there are Allenhurst property owners. I can testify that they all owned property for several years. (The list referred to was received in evidence and marked "Complainant's Exhibit

No. 188.") Our resident population in the wintertime is about 1,000, compared with 3,000 in the summer. We have two summer visitors for each one of our population in the winter. The valuation upon which the State and county taxes are apportioned is $6,636,350.

We have hotels. [897] They are the Allenhurst Hotel, which just burned down just before Christmas, and the Curlow Hotel. As to the character of the summer homes that we have, they are all rather large houses. They have got—I imagine you would call the one large that had seven or eight master bedrooms. They have very large homes, particularly the two blocks nearer the beach. Of course, as they get nearer the main street, they get smaller in size. They are principally people that own their own homes. The majority are people that own their homes. We have spent money in the borough for boardwalks. We have a concrete walk— [898] For boardwalks and jetties we spent $275,000 on everything within the last four or five years. We spent that much on the beach front on jetties and things to protect our beach front, and also on a small boardwalk that was washed out during the storm. We have a bathing pavilion—the Allenhurst Bathing Club & Casino. It is municipally owned. It is assessed on our books for $250,000. It is exempted, of course, but we have to put an assessment in just the same. There are no other clubs or pavilions. There are no other enterprises along the beach; that is the principal one. There is no business conducted along our beach. It is strictly a residential community. We have a business section [899] on Main street. That is the back of our community. The length of our beach front is 1,200 feet. The only attraction of Allenhurst is the beach front, the swimming pool, the bathing. If it was not for that, we would have no home community at all in Allenhurst. I have photographs of the situation. I have already had some that I took of the garbage, but I have some photographs here

(indicating) that will give an idea of the crowds and kinds of people that we have in the summertime. I took these three pictures (indicating). They are marked Allenhurst, N. J., Beach, February 7, 1929. [900] (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 26" to "Complainant's Exhibit No. 28," inclusive.)

These three pictures, Exhibits 26, 27 and 28, show garbage conditions on the day mentioned. I made a note of the elements or articles that were included in that mass of garbage. There were tin cans and bottles, grapefruit and oranges and lemon peels, onions, pineapples, and tin cans, small pasteboard boxes, and things like that. But I could not find anything that had any New York City address on, unfortunately; I walked for about a block, and could not find anything. In the wintertime our street men have to go down and clean the garbage off, but in the summer the life guards on the beach dispose of it. [901] Sometimes they bury it, and sometimes they cart it away. The borough spends for that purpose approximately a thousand dollars to keep our beach clean from garbage, principally. I am familiar with picture marked "Credit Airview Company." It shows the Allenhurst swimming pool and casino, the whole enclosure. This is the municipal bathing pavilion (indicating). It shows the character of the residences in the neighborhood. That is a fairly typical section shown there of our community generally along the beach front, in fact, the whole town. The whole town is laid out and described here. [902] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 25.") The town has been practically 100% developed for the last 15 or 20 years. These pictures (indicating) have a date in the corner of each one. That is the date they were taken. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 189" to "Complainant's Exhibit No. 202.") These Exhibits 189 to 202,

generally speaking, show the number of people that patronize our bathing and swimming establishments. They show the general activities on our beach [903] at the time the pictures were taken. I might add that Exhibit 202 shows a small crowd on our beach, and in the last two or three years our beach has been patronized much more than would appear on this picture. That was taken in 1928. Exhibit 198 is a bathing pool. Exhibit 200 is a bathing pool. Exhibit 199 is the outside of the pavilion, with the accumulation of parking space and cards. Exhibit 197 represents just the number of people around the pool. Exhibit 196 is the pool, also 195. [904] 194 represents just some patrons of the pool. Numbers of times in the summer season that I know of personally, the beach has not been patronized by our people, due to the condition of the beach and the high water, from garbage floating in right after a storm. I understand the building of our pool had some connection with the garbage on the beach. That was before my time. I have no personal knowledge on the subject. I think Mr. Kittell can testify about that. I hear complaints about the garbage among our people. [905] Well, I would say that is—at least, that I know of—that garbage has been a nuisance three or four times a season during the summer season, and then, of course, every time we have a northeast storm in the wintertime, we are troubled with it, but, of course, it does not affect the bathing in any way at that time. It is a subject of common complaint in the community among our summer residents.

On *cross examination.* I have been borough clerk for six years. I testified that the assessed value of property in our borough is now approximately $6,000,000. That is the valuation on which the State and county taxes are apportioned. I think the assessed valuation was around $3,000,000 when I first became Borough Clerk. The entire borough [906] was developed about 100% up to fifteen

years ago. When I first started working for the borough in 1917, there were about ten vacant lots then in the borough, and there are now about three or four. So you see it was practically developed 12 years ago, and it is easy to say 15 years ago. These municipal improvements, the concrete walk and the piers were built before my time as Borough Clerk. They were built before 1917. I think it was around 1914 that they were built—the previous administration.

ENNIS KITTELL. On *direct examination.* I live in Bradley Beach. [907] I manage the Allenhurst Bathing Beach and pool, swimming pool. I have been connected with that for 13 years. In connection with my duties, I positively come in contact with the garbage on the beach. That is my job. It creates a menace to the beach, as far as bathing goes, in every respect, in respect to the fact that the people will refuse to go into the water when this garbage and trash and stuff is floating in it.

Q. Were you there when the pool and pavilion were built?

A. No, it was about two or three years before—

Q. Were you there at the time the pool and pavilion were built?

A. Yes, my home was there, and I was born and raised on the coast.

[908] I would say that the pool was built to take care of the bathers during a rough storm, when the ocean was rough, and also it is used in these days—and that has come to my personal observation—for people to bathe in when they could not go into the ocean on account of the garbage. It is used as a substitute place to bathe during the garbage period. We have this trouble with the garbage on the beach every time the wind is east or northeast. I could not say how often that occurs. During the season it is of frequent occurrence. [909] Here is just what I have positively seen time and again:

Grapefruit, oranges, lemons, bananas, tomatoes, potatoes, turnips, parsley, corn, and bunches of grease like—garbage, fat, and also small particles of grease that would stick onto your shoes, and become jellied; dead dogs, cats, candles, cocoanuts, assorted nuts of all kinds, pumice stone, corks, cans, bottles, children's toys, old mattresses, bed springs, crates and boxes, lard and butter tubs, and old discarded furniture; masons' lead—all kinds of materials I would say, from building operations; old shoes, and loads of packing straw, which, to my knowledge, I would say, possibly, comes with things like crockery would be packed in it. It is straw that is not familiar to me that is raised in this section of the country, like we would use with horses, or straw protector that would come along whiskey bottles. I have seen all of that on the beach—and a broken bottle is a very dangerous hazard in cutting the people's feet. [910] More than one person has come to the office with a foot that has been cut with a broken bottle. The broken bottles we have to cart away and bury. The debris, like broken crates and pieces of wood, when we have the wind in the right direction, we burn it; that is, in the spring of the year and the fall. In the summer very often we have to cart that stuff away. I would say we spend approximately $1,000 a year in taking care of the garbage. That is within my particular duties. This has continued ever since I remember. It continues to increase all the time.

Q. Have you ever found any objects that you could identify among the garbage as to names or addresses?

A. I think you have before you a piece of a sign that [911] I picked up.

I have here a piece of a sign—I do not know the name of the company, but "Inc." is all I can see on the part here, "12 East 52nd Street, Phone Plaza 0270." It has the same thing on both sides. I found that on our Allenhurst beach on September 14, 1929. I marked it on there.

Mr. Minard. I had that sign photographed. May the

photographs be accepted in evidence in lieu of the board itself?

(The photographs referred to were received in evidence, and marked, respectively, "Complainant's Exhibit No. 203" and "Complainant's Exhibit No. 204.") I have not picked up any other articles. [912] I have seen other articles at different times, but I have never picked them up. This last spring I had five men for five days to clean up the beach. We did not cart it away. We burnt it. We burnt that that would burn, and buried quite a bit of the other. Bathing is the chief attraction of Allenhurst. The community depends for its people on the bathing. During the periods when the garbage is on our beach, the whole purpose and function of the community is suspended. I do not know how much we spend maintaining and [913] operating the beach and the pool a year, but the overhead of the running of that pool alone is somewhere around $20,000 to $23,000. I would say $20,000 to $25,000. We have difficulty in getting this garbage off our sand. When we have raked up the garbage and hauled it away that sand is clean and nice and ready for use. I would not say that it leaves any kind of a grease or scum or anything of that sort, because we rake that; first, the heavy matter, we use either a heavy wooden rake, or an iron rake, and then we use these very fine brass rakes, and those will go over it like with a fine tooth comb. That is necessary, after each garbage deposit, because this straw matter that I mentioned, for example, a rake will not pick it up.

[914] On *cross examination.* With respect to our municipal pool, we do not charge an admission fee for the use of that pool. It is open to the lessees of our bathhouses. I might state first that our bath houses are all leased by the season. The attraction, of course, is the bathing and the swimming pool. Now, in the sense that you might mean, we do derive a revenue from it, if that is

what you mean. [915] (Witness questioned as to whether Allenhurst derived a profit from the operation of the pool.) We do not derive any profit at all. We operate it at a loss. I cannot see where there is any profit made from the pool. There is no fee attached to the pool. It is a seasonal rent. So I do not grasp what you mean by that. No one can use the pool unless he is a bathhouse lessee. This leasing privilege is a means of excluding the general public. Allenhurst owns the beach. They own the water under the beach. (Discussion of counsel.) [916] I know that it belongs to the Borough of Allenhurst. As to the land under water, I assume they own the riparian rights. I would assume so, if they own the beach. The practice has been, in rough weather and [917] rainy weather, to use the pool, and when the sea is lined with garbage. The garbage is always a concomitant of the storm when the wind is northeast. The garbage comes with the wind without a bad storm. It is the wind that produces it in the storm. It is a northeast or an east wind. We do not have a calm sea when we have a northeast or an east wind. We have a rough sea with a northeast strong wind. That is the time that [918] we have the garbage on the beach.

Q. The fact is, that when you have a strong sea, caused by wind or other condition, the pool is used instead of the beach?

A. No, not always, oh, no. The roughness of the sea depends on the velocity of the wind.

If we have a high wind, we will have a rough sea, but I have seen the sea rough, without a high wind, and I have seen garbage on the beach when I would consider it not a high wind. As to what would be the velocity of that wind. I could not say—I am not a man to judge the different velocities. I have seen the wind blow 50 or 60 miles an hour at times, of course, spasmodically, and I have seen it blow in so hard, and I have seen it as high as that (indicating) and like that (indicating),

and I have seen it like that with a high wind. But usually I would say it is rough with a high wind. That is what we call our rough sea. [919] That is the usual condition when the sea is rough with a high wind. When we have a rough sea with regard to people being permitted to bathe that is usually left to my judgment, and as manager I have the life guards pass their opinion as to whether it puts their lives probably in jeopardy to permit anybody to go in the ocean. I have went down many times and said to the life guards, "Do not think you should let anybody in." They, in turn, would say, "It is all right, Mr. Kittell. I think it is all safe." And they have come to me many times when I would be busy and would not see the beach, and so inform the bathers, that there is no bathing in the ocean, and I would post that notice, "No Ocean Bathing."

On *re-direct examination.* This question of garbage is one of the direction of the wind. [920] If the wind is blowing from the garbage dumps, we get the garbage whether we are in a storm or not. We get it faster if the wind is blowing hard and more of it.

Q. Now, during a storm, if there is one that brings in the garbage, of course you suspend bathing, is that right?

A. Yes, but after the storm subsides—

Q. After the storm subsides, do you have to continue to suspend the bathing on the beach?

A. Well, I have seen the time, yes. I have been cleaning up that beach, that garbage—in the spring of 1928 I was cleaning up that beach, and I worked for five days on it, and we practically had cleaned it up in nice shape, and I looked off and in the undertow the men called my attention to it, and said, "Mr. Kittell, look off to the sea," and there it was coming in just as fast as it was before, and I had the same job to repeat over again.

For Plaintiff—Benjamin C. Van Tine, direct.

[921] BENJAMIN C. VAN TINE. On *direct examination.* I live in Long Branch. I am connected with the Attorney-General's office. At your request I made an excursion on Tuesday along the beach to ascertain the garbage conditions on the beach. I took with me Mr. Brown, who took a series of pictures. I saw the conditions on the beach in different municipalities as they are shown on those pictures of 11 beaches. [922] Mr. Cornwell called at my house at eight-thirty o'clock. We drove to the Long Branch beach, and I said, "We will stop at the beach, and see if there is anything on the beach." And the Long Branch beach was lined with garbage. At the foot of the stairway I saw two bottle tops. I just stepped off at the beach and picked up those bottle tops (indicating). These (indicating) are Sheffield Dairy caps from 632 West 125th street and Morningside Western avenue. We then went on to the beach at Deal. Ocean avenue does not run along the ocean at Deal, and we turned up a corner there, I do not know the name of the street, where the Jeffry Fishery is, and there was a very bad condition at the foot of that street, and in the space of about 50 feet we picked up this laundry ticket (handing to Mr. Minard). This is a laundry ticket from the Brighton Laundry Company, West 6th street, Coney Island. And that top (indicating) is M. & O. Dairies—numerous addresses—483 East [923] 169th street, 278 East 198th street, 334 Cone Hill Road, 309 Bainbridge avenue, 4219 White Plains avenue. And some 10 or 12 bottle tops from various dairies in New York City. These (indicating) are Sheffield's and Borden's.

We had an appointment with the photographer at nine-thirty. So we came to Asbury Park, and picked up the photographer, and went to the beach, and a few hundred yards down we reached Loch Arbour beach, and made a photograph, which was offered here. And that photograph covers a certain area, and in that area

covered by that photograph we picked up this pile (handing material to Mr. Minard). This (indicating) is a milk container from Sheffield Farms, 1045 West avenue, and a miscellaneous lot of milk bottle caps.

Mr. Crowe. I think we ought to read into the record, "Pasteurized at."

Mr. Minard. Yes, "Pasteurized at."

Here (indicating) is a Sheffield Farms cap, pasteurized milk, 521 West 125th street, New York City. Here is another one from Borden's, 443 West 127th street, and one of Borden's from 90 [924] Third avenue. And some 15 or 20 milk bottles, Borden's and Sheffield Farms. I do not know whether there are some other names on some of them. We then proceeded to the Ocean Grove beach, and I might add that we made no attempt, since we had covered so many municipalities, we made no attempt to pick out places to take pictures, but stopped the car at any point, walked over to the boardwalk, went over to the beach, and took pictures there, and made no attempt at all to pick out advantageous sites to take the pictures.

On the Ocean Grove beach, we picked up these containers (handing articles to Mr. Minard), and a stub from the Savery Pharmacy, 56 11th street, corner of Hudson street. Here (indicating) is one more cover from Sheffield, 526 West 125th street; the same dairy, 896 Amsterdam avenue, between 103rd and 104th streets, New York, a paper carton cover.

A Borden cover from 443 West 127th street; some more Sheffield Farms, from 1 West 25th street. These (indicating) were taken right from the garbage that shows in the picture at Ocean Grove. Here (indicating) is one from Sheffield's, [925] 551 West 125th street, and a number of other small caps from Borden's and Sheffield's.

We then proceeded to Bradley Beach and took a shot. This (indicating) is a street directory of New York. That is just as it was. Here (indicating) is a billhead from Eitingen-Shilt Company, Fur Merchants, 222 West

For Plaintiff—Benjamin C. Van Tine, direct.

30th street, New York, addressed to or sold to— it says Mr. Rentger, 225 West 116th street, New York City.

Here (indicating) is a New York Edison bill—Rentger, 225 West 116th street. It is directed from 393 7th avenue, at West 32nd street, New York Edison.

Here (indicating) is one J. Oranger, Furs and Skins, to the same Rentger, at the same address, 225 West 116th street, New York.

Here (indicating) is one, National Pill Dust Company, to [926] Rentger, the same address in New York. The Pill Dust Company, is 223 East 21st street, New York.

Here (indicating) is a bill to Rentger, to the same address in New York, from S. Morris Manufacturing Company, 214-220 West 29th street, New York.

Here (indicating) is one to Rentger, a Ziegler billhead, addressed to the same person, Rentger.

Here (indicating) are some more Rentger billheads, from Peoples Garage, 235-239 St. Nicholas avenue, New York. There are half a dozen or so of those.

Here (indicating) is one of Mr. Rentger's own checks on the Colonial Bank, with his own address on it, 245 West 116th street.

Here (indicating) are half a dozen or more from Ziegler to Rentger—with a New York address of Ziegler and a New York City address of Rentger.

Then we have a card here (indicating) of F. S. Slessinger & Son, Fur Blenders, Factory, 722 East 133rd street; and then there is another number here, 1854 Seventh avenue, New York City.

This (indicating) is a card to Mr. Rentger, with a memorandum or notation on the back of it, Mr. Rentger, West 116th street, it is marked. We then proceeded to Avon, and we took pictures there, and picked up milk bottle tops, about two [927] dozen of them, among the garbage which we have taken. They are about the same as we have had before, with these New York addresses on them. Here (indicating) is one from Long Island City. It was

raining quite hard, and it was a question of not making at any trip at any expense, so we just picked these tops up within a small radius.

Here (indicating) is one from the Blue Ribbon Dairy, 2360 Broadway. We then proceeded to Belmar, where we took pictures and picked up various bottle tops. Here (indicating) is one, 509 106th street, New York City—a great variety of them. We then proceeded to Spring Lake, where we took pictures, and picked up some more milk bottle tops, and that (indicating). Here is one from Sheffield, 527 West 125th street, New York City; and these others all have New York addresses on them, half a dozen more. [928] It was raining, so hard that we passed Sea Girt, hoping it would stop raining, and at Point Pleasant it had stopped raining, so that we were able to take a picture, and pick that out (handing articles to Mr. Minard). Here (indicating) are 25 or 30 bottle caps. They all have New York addresses. By "New York addresses," I mean the name on the cap gives a New York address.

By Mr. Crowe.

Q. It gives the pasteurization point as being a New York address?

A. I do not know anything about that.

Q. When you say "New York address," you mean the address that follows those words (indicating)?

A. Except this, that our local Sheffield Farms have their pasteurizing plant at West End.

We then proceeded to Mantoloking and picked up some bottle tops. [929] With the same New York addresses on them, the same dairies. Here (indicating) are about eight or ten more. We then proceeded to Lavalette, and took pictures and picked up these bottle tops (indicating) in the area in which the picture was taken. They all have New York City addresses on them. Then proceeded to Seaside Park, and picked these up (indicating). Here

is one (indicating) from the Fox Square Laundry, 1471 Edgewater Road.

Mr. Crowe. There is an Edgewater Road in the Borough of the Bronx. I will so concede on the record. There is a Bronx Laundry, 175 Morrison street, Bronx, New York, and about a dozen bottle tops. And here (indicating) is a laundry ticket. The rest of it is gone. We then went on, and I think it was very dark, but we were able to take a picture at Sea Girt, and that is the only one we were compelled to miss on the way down. [930] We visited 13 beaches, and took pictures at 11. Here (indicating) is another milk container top, marked Sheffield, pasteurized at 175 West avenue, Bronx.

And another, Sheffield Farms Pasteurized Milk. This (indicating) has a new address on it, 1045 West avenue, Bronx. These all have New York addresses on them as pasteurization stations.

On *cross examination.* Mr. Cornwell and the photographer were with me at the time I picked up this matter. Every bit of this material was on the beach. I did not see it before I picked it up on the beach. At first it was very foggy, and I doubted whether the pictures would take. When we arrived at Loch Arbour, [931] after we had visited Asbury Park, we borrowed raincoats from the Coast Guard, and it was raining quite hard at that time; and we were using a Graflex, and so were able to take the pictures.

We absolutely saw nothing before we picked it up on the beach. All of this (indicating) was wet when I picked it up. I previously testified that it was raining and had rained before, except in Long Branch it was foggy only, but it had been raining in the night.

On *re-direct examination.* These were the beaches which I exhibited to you yesterday. [932] The condition which we saw yesterday is substantially the same condition which I saw the day before all the way, and from

For Plaintiff—Cyril A. Smack, direct.

Long Branch to Seaside Park is 27 miles. I inspected the beaches all the way down. Manasquan is off of the road, and we did not go in to the Manasquan beach. We visited altogether 13 beaches. The conditions were quite uniform all the way down, except that it seemed to be not as bad at Long Branch, and at this end. As we went along, it got not quite as bad. It was a strip fifteen or twenty feet wide at the lower end, but Avon was completely covered from the boardwalk to the water's edge with these specimens which we picked up, the remaining collection there was the grapefruit and the usual things that we have heard of—garbage. The general mass of mixed garbage on the beaches.

[933] On *re-cross examination.* The character of the materials and the extent of their distribution over the beach were exactly the same as at the time the Court and counsel visited the beaches yesterday. I cannot say they were exactly the same as at my visit on the previous day. I went out the previous night, and there was a very high tide, and some of it had gone out, but the general condition was about the same. I say there was a high tide the night after we took the pictures, and there may have been a little difference. They may have been piled up differently, or they may have been closer to the boardwalk, and may not have been so close to the water's edge; as the tide washes up, it may make a different layout, but the general conditions were about the same.

[936] CYRIL A. SMACK. On *direct examination.* I have the dates that Mr. Crowe asked for.

Mr. Minard. I will say for the record that these are the dates when Mr. Smack made the inspection trip at sea which he testified to at the opening of the hearing.

Those dates were April 30, May 1, May 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 26, 28, 30, 31;

For Plaintiff—Cyril A. Smack, direct.

June 1, 2, 3, 6, 9, 12 and 30; July 2, 17, 23 and 24 in 1929. In addition to that I was out on January 7, 1930.

Mr. Minard. I will ask the witness to mark on this chart—which we will now offer in evidence. It is United States East Coast, New York—New Jersey. Approaches to New York. "Fire Island Light to Sea Girt Light, U. S. C. & G. S.," [937] by the United States Coast & Geodetic Survey, published at Washington, D. C., July 25, 1925. (The chart referred to was received in evidence and marked "Complainant's Exhibit No. 205.")

Q. Will you please mark with a pencil a cross at the places on that map (indicating) where you have seen the dumping take place?

A. Approximately there (indicating).

Q. That is at the twelve-mile point?

A. Yes.

Q. Put a big cross there.

A. (Marking map.) That is it.

Q. And where else?

A. Approximately there (indicating on map).

Q. At the nineteen-mile point?

A. Yes. And nearly all of the spacing between the nineteen miles to twenty-one miles; that is, these various points between.

Q. Now, where did you see them on the 7th, when you said they were still dribbling garbage with the side doors open?

A. (Examining map.) Approximately there (indicating).

Q. You can make a cross there and put a ring around it [938] to indicate a special location.

A. That is it (indicating on map).

Q. Now, the twelve-mile point is opposite what point?

A. North Long Branch.

Q. And how far from North Long Branch?

For Plaintiff—Cyril A. Smack, direct.

A. Approximately 11½ miles.

Q. Well, the twenty-one-mile point is opposite what point along the shore?

A. It is opposite Asbury Park, north end.

Q. And how far from it?

A. It is approximately 19¼ miles.

The principal dumping grounds, that is, the most frequent dumpings that I saw, were between the nineteen-mile and the twenty-one-mile points, which would be approximately between Deal Beach and North Asbury Park. I have seen the dumpings between the twelve-mile point and the twenty-one mile point. [939] From the twelve-mile point to the twenty-one-mile point would cover from North Long Branch to North Asbury Park. This map has a compass on it, indicating north, east and west. The natural direction in which the garbage would go from these dumping grounds in an east or a northeast wind is toward the shore. (Discussion between counsel. Objection to question. Overruled. Exception.) [940] Without regard to how the tide is running, a great many people have the impression that when the wind is blowing, it sweeps out this way (indicating). But that is not so at all. If the wind is east, whatever is on the surface of the water just goes ahead of that wind. If you are interested for me to explain the principle on which it works—I have been on the beach a whole lot. And these beaches will be quiet and smooth on a west wind, whereas they will tear out on a hard east wind; and the reason that that is so is that that action is just working out that way; in other words, the sand is working out. But when a reverse takes place, that sand is working up. It is the fact that waters keep to their level that is responsible for that. If the wind is blowing the top of the water toward the shore, then it is the undertow that goes back out, to take the place of that which is coming in, and *vice versa*, with a west wind. [941] It is this undertow that tears

out the beach. Any wind from the east or northeast coming upon garbage in the sea would carry it then, either directly or at an angle, toward the New Jersey shore. Now, they are frequently in advance of an east storm; as the fishermen testified, to some extent, here, there comes an advance cut or current decidedly toward the shore, and the fishermen who know these waters well will know that there is a northeaster, or a hard easter, coming when that condition obtains; but before that wind starts to blow, anything that is on the surface at that time will start toward the shore and come very rapidly. Now, the wind does not have to blow so hard to bring this stuff in; sometimes the wind is comparatively mild. For instance, under the condition under which most of this stuff came in in the last week, bathing would have been fairly good, in the opinion of anybody who knew these waters along here.

On *cross examination.* [942] I saw dumping at the point indicated on the map "X," 12 M. on May 1, 1928. I saw the tug Rowencard. That is the tug towing the scows. The scows were two New York City D. S. C. scows. I did not look at the names. I did not approach close enough to get them; and I approached right into the mass after they left. There were two scows. On May 2 there was the M. M. Moran and three New York City D. S. C. scows. Scows dumped about 12 miles southeast by east of Scotland Light. I do not know the designation or lettering of those scows. I did not approach close enough to get it. [943] That was all that I got at the 12-mile dumping. That was May 1 and 2. The rest of it was from 18 miles on out to 21. At the time I observed them dumping, I was perhaps about one-third to half of a mile from the scows. I am speaking now in terms of nautical miles. All those distances noted by me on the map, Complainant's Exhibit 205, are nautical miles. On all of these dates, from April 30 to July 24, I was accompanied by others. They were Mr. Forsman, sen-

ior, that is Gustave Forsman, and James Hall—well, right straight through, excepting in the January trip, and that was Mr. Forsman, junior, who was here yesterday.

I think I could say I have made a technical study of the subject of tides and currents in the Atlantic Ocean in the vicinity of the Jersey coast. [944] I have been, as I think I testified before, I was a life guard on the beach when I was a boy 16 years old, and I have held various positions as life guard, and then as superintendent of a bathing pavilion of the Seabright Beach Club—and I can say this, not one of the positions that I ever asked for; the very first one came to me on the strength of a rescue I did, and the last one came to me without my asking for it. I have watched these waters a lot, and I have watched them thinkingly. Some of these people may watch things and not think, but I think. The result of my observations is that the rise and fall of the tide has comparatively little effect. Between the rise and fall of tide on the one hand, and velocity of wind on the other, I consider [945] the wind has the greater effect by far. The extent of the effect of a 60-mile gale upon tide movements in the vicinity of the Jersey shore would depend upon how long that wind blew. If it blew a long while, it would be advisable for everybody close to the shore to move out. A tide movement would be accelerated by a 60-mile gale blowing from an easterly or a northeasterly direction. I make a difference between surface tides and sub-surface tides. If you want to be sure that there is a distinction between them, just let some heavy object placed low in the water be placed beside something that is [946] high in one of these high gales. I am referring to the conditions on the shore and the conditions of the water and tide nineteen miles off the shore. I did not say the conditions are identically the same, out in the Atlantic Ocean twenty-one miles from the Jersey coast as they are right near the coast, with respect to tides. [947] There is always

the resistance of the bottom to be taken into consideration, as you run up into the shallower water. . (Discussion between counsel as to nature of questions.)

Mr. Crowe. He seems to have been offered as an expert on this matter, and I am trying to ascertain the extent of his expert knowledge.

Mr. Minard. We have not offered him as an expert at all.

Mr. Crowe. He is not offered as an expert?

[948] Mr. Minard. No, sir. He is testifying only as to his personal observations on these trips.

The tests I have made to support the observations I have testified to here, with respect to the surface current moving in the opposite direction to the direction in which a sub-surface current would move are as follows: I have stopped at the lobster pots out there, which are fastened by lines to the bottom, you know, and seen their floats being held to their one position, and on the outgoing tide I have seen objects moving toward the shore at the rate of, perhaps, three to four miles on the outgoing tide pass those pots. That is one thing. And I have definitely followed materials toward the shore that were driven ahead. I have definitely followed them when the stuff was coming in, the stuff being driven ahead of the east wind. The materials that were moving with the tide were everything that was on the surface, [949] anything that floats, anything that is free in the water. (Further discussion between counsel.) [950] The wind does affect tide movements. The effect is to pile the tide ahead of the wind. In other words, if the wind is driving from the east, and driving hard, the tides will pile up very much higher, which means that so much more water has to come at a given time and a given point. The tides will rise up so much higher. The tides, I know, have risen as high as eight feet higher than normal ahead of winds.

For Plaintiff—Garrett Irons Johnson, direct.

On the other hand, when the wind is hard from the west on the Jersey shore, why, the tides are at their lowest; that is, under given conditions of the moon and sun, and their [951] relative positions.

GARRETT IRONS JOHNSON. On *direct examination.* I live at Long Branch. I am a photographer. I have been in that business for six years. I accompanied Mr. Smack, Mr. Forsman and Mr. Hall on some of the trips out to inspect the garbage. I took pictures out there. [952] I took the picture marked Identification No. 3. That was made on July 2, 1929, about 11:55 A. M. That scow was moving (indicating) inland, going back to New York. I have titled that here (indicating): "Scow Returning To The Shore." (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 3.")

Complainant's Identification No. 4 was taken [953] the same day, July 2, 1929, but it was made at two-thirty o'clock P. M. It shows a scow returning to shore, but much nearer Scotland light ship about a mile from Scotland light ship. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 4.") Identification No. 5 was taken July 2, 1929, approximately two-thirty o'clock P. M. It shows a scow on its way toward the shore, made about a mile from Scotland Lightship, and shows workmen pushing garbage from the ridgepole—I call it the ridgepole for lack of a better term—pushing garbage from the ridgepole of the scow. [954] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 5.") Identification No. 6 was taken July 2, 1929, at 11:55 A. M. It shows scows returning to the shore after they had left the main dumping grounds. It was quite a distance from Scotland Lightship. They were going toward Scotland Light. You can make an interesting comparison between this picture and some of the ones made near

Scotland Light. The heaps of material in the scow are garbage. That is a picture of the scow after it had dumped. [955] It shows another scow in front similarly covered. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 6.") Identification No. 7 was taken on July 2, 1929, about 2:30 P. M. It shows a scow approximately one mile from Scotland Lightship, and also shows the workmen pushing garbage from the ridgepole of the scow. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 7.") Identification No. 8 was taken July 2, 1929, 2:30 P. M. It shows the scow about a mile from Scotland Lightship, with some garbage still adhering to the ridgepole. [956] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 8.") Identification No. 9 was made July 2, 1929, about 2:30 P. M. It shows the scow that was photographed running to the shore, about 1 mile from Scotland Light. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 9.") Photograph No. 10 was made July 2, 1929, at 11:55 A. M. It shows a close-up of a part of a scow, with garbage adhering to the ridgepole. It was a short distance from the dumping ground; the others were further out to sea; that was at dumping, too. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 10.")

[957] Identification No. 11 was made at sea July 17, 1929, at 11 A. M. It shows the scow returning to the shore after having dumped the major part of its load at sea. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 11.") Identification No. 12 was made at sea July 2, 1929, about 11:55 A. M. After we had passed the scows and the tug and had made several photographs, and we were about in the position from which this photograph was taken, Mr. Smack asked me if I could make a photo-

graph showing the greasy trail left by the scows as they went through the water, and I made this picture, which does show it. The lighter portion shown in the water, and readily seen proceeding from the foreground, right up to the scows, is a photographic representation of the greasy wake left by that tow. [958] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 12.") Identification No. 13 was made July 17, 1929, about noon. It is a portion of the garbage dumped at sea. That picture was taken at the dumping ground. That is the appearance of the water after the scow has dumped. But it shows only a part of it. That is representative of an area as large as this room, and I could have made many more pictures from different angles. [959] I could only estimate the area in this picture. I could not estimate the total areas; it is too much. I would say 300 square yards. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 13.") Identification No. 14 was made July 17, 1929, about noon, at sea, showing the dumping ground there. May I refer to the picture previously shown? Here is what I mean (indicating on photograph). (Exhibit 13.) There are two pictures. One of them shows the surface shown littered with garbage, and it shows the horizon line—that one. (Exhibit 14.) [960] And the other picture, Exhibit No. 13, shows a limited surface of the ocean made at close quarters. I did not see these scows actually dumping on any of my trips. The first time I saw the scows was July 2, 1929, about 11:55, when they were returning to shore. I went with Mr. Forsman and Mr. Smack and Mr. Hall. We followed a trail of garbage from the point where we saw the scows until we came to these (indicating). In fact, Mr. Smack pointed out at different times, and we immediately noticed, and we commented on it, the material which would be classified as garbage floating in the ocean, and we would

follow that until we came to the garbage dump, the point where I took these pictures. [961] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 14.")

Identification No. 15 is a view of a garbage dump at sea, photographed July 17, 1929, about noon. It shows a portion of the garbage floating out there. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 15.") Identification No. 16 shows a portion of the garbage floating on the sea. It was taken July 17, 1929, about noon. [962] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 16.") Identification No. 17 was made at sea July 17, 1929, about noon. It shows a portion of the garbage floating on the sea. That (indicating) is the edge of a smaller life boat which we carried with us. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 17.") Identification No. 18 was made at sea July 17, 1929, about noon, showing a view of the garbage dumped at sea. Practically all of these garbage pictures are the same—I mean, as far as time goes. [963] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 18.") Identification No. 19 is a photograph made at sea July 17, 1929, about noon; a view of the garbage dump there. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 19.") Identification No. 20 is a photograph made at sea July 17, 1929, shortly before noon; and it shows the way the garbage is streaked in ribbons on the surface of the ocean, particularly before we came upon the main garbage dump. This does not represent the dribble that I spoke about from the scows. This is somewhat different. In fact, entirely different. I do not know how this comes to be like this (indicating), but it is not exactly the same as the others—like a trail following the scows. This

seems to be, in a manner, orderly—a streak across there (indicating), and another streak across there (indicating), and another across there (indicating); I do not know how it got there, but the trail is a general greasy scum on the water, with various [964] objects classified as garbage floating in it. We encountered this strip, No. 20, just before we made these other pictures of the garbage, showing the main dump; maybe they started about a quarter of a mile and became stronger and more in evidence as we approached the main dump. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 20.") Identification No. 21 was made at sea July 17, 1929, about noon, showing some of the garbage dumped there. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 21.") Identification No. 22 was made at sea, July 17, 1929, about noon, showing some of the garbage dumped there. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 22.")

[965] Identification No. 23 was made July 2, 1929, at approximately 3 o'clock, and it shows the Scotland Lightship, and in the distance it shows the tow of scows, which do not show very distinctly, but I am prepared to swear here that this black dot on this scow (indicating on photograph) is garbage. If we eliminate this dark spot, which we will call the bow of the scow—I refer to the point I am speaking of as the first black dot—we are eliminating the bow, you see. I say that is garbage on that scow. I had just passed by, you see, and made the pictures that you have already seen showing that garbage, and came from there to the Scotland Lightship, and it could not have changed in the meantime. [966] (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 23.") It might have diminished its quantity, but it could not have increased it on the way up. Identification No. 24

was made at sea July 17, 1929, about noon, showing garbage dumped there. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 24.") Identification No. 29 was made July 17, 1929, about noon, showing garbage dumped at sea. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 29.") [967] (Witness was shown a number of photographs which he examined. Witness discarded the one he had not taken.) I made the rest of the pictures, I think. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 206" to "Complainant's Exhibit No. 211," inclusive.)

The Credit Airview Company is my company. (Witness was shown some pictures.) Those are pictures taken by myself and my brother. They have a rubber stamp on the back. I could recognize any of them.

Exhibit No. 206 is a photograph made in a southerly direction, showing the Monmouth Beach Club and the garbage littering that beach which the club uses as a bathing beach. This photograph was made in the summer in either 1925 or 1926. [968] The borough officials there called upon us to make these photographs, so that they could offer them to the State authorities as evidence of the conditions, and thereby get them to prosecute this garbage pollution suit. That is Complainant's Exhibits Nos. 206, 207 and 208 are both details of that same mass of garbage shown in 206; 207 and 208 are details of 206; that is all that need be said about them, I believe. Exhibit 209 is a photograph made from an airplane, looking in an easterly direction. It shows the development of the Jersey shore in the vicinity of Shark River. In the foreground we have a large real estate development, known as the Shark River Hills. I do not know if that is known as West Belmar. I know that over on the shore front we have the town of Belmar. I believe this is Belmar here (indicating on

photograph) between the two inlets. I could tell you better what these [969] towns are, by referring to a map. But it shows the several towns along the shore, and it shows the state of development there in the vicinity of Shark River. That (indicating) is Shark River Inlet, and that is Shark River near the ocean (indicating). The next exhibit is 210. It is an aerial photograph showing the northeastern part of Long Branch and part of its ocean front. It shows the beach, the ocean, the Ocean Drive, the hotels and summer homes, especially on the ocean. It shows the inland residential parts and the beach in that section of the town. It shows the pier and the various pavilions and casinos there on the shore. Exhibit 211 is an aerial view showing the northeast- [970] ern part of Monmouth County. It shows Long Branch, part of it—from Elberon north, and shows Monmouth Beach, Seabright, Highland Beach entirely, and their beach front. It shows Sandy Hook, the North and South Shrewsbury Rivers, part of the Bay, Staten Island and Long Island and the Atlantic Ocean. That was made about three years ago. The other one is of Long Branch and was made about three years ago.

On *cross examination.* I used a 5 x 7 compact Graflex camera on the occasion of the taking of the pictures at sea. I made the enlargements which have been introduced here in evidence. I do not recall placing a scow at any specific point, except saying on one or two occasions that they were within a mile of Scotland Light. [971] I said I did not know where I was, because I did not navigate the ship. I did not locate the scows any more than to say there that they were approximately a mile from Scotland Light, or they were returning to shore. And since I have just come from the shore, and have lost sight of it only a short time ago, I knew they were returning there. (Discussion on what witness

had previously testified to.) (The stenographer read extracts from the preceding testimony of Mr. Johnson and Mr. Smack.) [972] (Examining photographs.) In Exhibits Nos. 4, 5, 7, 8 and 9, the scows were approximately a mile from the Scotland Lightship. I base that statement, that they were approximately a mile from the Scotland Lightship only upon my observation, there, and my conception of a mile, a mile on land. I do not know what a nautical mile is. These are Exhibits 6 and 10. I cannot locate those scows and give you the point on the ocean where they were, but I can say this: They were returning to shore, and they were not far from the garbage dump.

These photographs were made with the camera pointing to the shore. You cannot see any evidence of the shore at all; because this is a close-up. These photographs, Nos. 10 and 6, [973] were made the first time I ever saw the scows. We were passing them. We were going out and the scows were going in at that time. When I say the scows were returning to shore, I mean they were going toward the shore, the shore of the United States. Exhibit No. 11—and that is another scow that I cannot locate its position. I had difficulty with my camera on one of these trips.

On *re-direct examination.* This garbage, as I saw it in the mass, contained wooden things: [974] crates, boxes and pieces of lumber; short sticks, perhaps three or four inches wide, and two or three inches long, and, of course, there were house utensils there, like brooms and brushes, and things like that, that the handles would be coming up. But as far as the wood part is concerned, crates, boxes, pieces of lumber. There was a considerable proportion of wood in the garbage, but it did not compose the major part of it by any means. It was mixed up with it. Before coming to this garbage dump, we passed another dump where there was nothing

but wood, and plenty of it. It was there in a mass, floating on the surface [975] of the ocean. I did not see it dumped, but it certainly had been. The mass was almost solid, and covered quite an area, and there was nothing but wood much further inshore.

ELIAS HERBERED. On *direct examination.* I live at Long Branch. I have been a coast guard for 24 years at Monmouth Beach. My station is about half a mile from the Beach Club shown in Exhibit No. 206 (handing map to witness), [976] south. I have had experience with the garbage on the beach at my station. Lots of garbage comes up in an easterly wind, sometimes a whole lot, and sometimes less.

It piles right up, and we see it coming on the shore. It will cover three or four feet wide, and it will be right up—I cannot say exactly how high. There is a mass of it. It comes right up to the bulkhead sometimes, when an easterly wind blows hard. It does not exactly interfere with my work, but the people who go in bathing, it interferes with them. We have to clear the way to get our equipment out sometimes, [977] but not very often. Sometimes we have done it coming out with our boats and things when it accumulates, we don't do anything with it; we just make a path to go through it; we leave it there; we don't have anything to do with it. This is within the Borough of Monmouth. They have to remove it at the bathing place. I patrol the beach and keep a lookout. My beat or patrol is from Monmouth Beach Station to Sea View avenue, Long Branch. That is two miles and a half. [978] There is garbage all over, all the way through, on the beach, through the whole length of my beat. I have never noticed anything in that garbage in the way of names or addresses. I have noticed among that garbage all kinds of fruit and boxes and corks and grease, and everything coming in there. I can't remember anything

else. The things are all mixed. I have seen it floating in the ocean. Sometimes there would be a quarter of a mile of it. I have never been out to sea where they dumped. [979] From shore I have seen, it not very far 300 or 400 yards.

CARROL OSBORNE. On *direct examination.* I live at Long Branch. I am officer in charge of the Coast Guard station at Monmouth Beach. I have been in the service for 14 years.

That is the same station that Captain Herebered comes from. Every time we have an easterly wind, we have [980] the beach practically covered with garbage then. It consists of decayed vegetables, occasionally a cat or dog or a dead animal of some kind, which we have often found. It just covers the beach up, so that when we have had to go out for drill, perhaps, we have had to clean it up, and it is not fit for bathing purposes in the summer.

I have seen the garbage in the ocean a short distance out. The areas of the sea I have seen covered with it are, I would say, approximately a city block. It comes from an easterly or northeasterly direction. I have never been out to sea where it is dumped.

[981] FRANK WEBER. On *direct examination.* I live at Monmouth Beach. I am in the fishing business. I have been in that business for 33 years. I do pound fishing.

I have always done pound fishing, never any lobster fishing. Once in a while I went after bluefish; never lobster. I go out to sea frequently. I have never been out to where the garbage is dumped. I never go that far. [982] I have seen garbage as far as you can look out to sea. We were about a mile out. I have seen it like when the tide changes it makes a kind of a wave and throws it up. I have seen it three hundred

to four hundred yards wide, and it must be a mile out at sea; so thick that you could walk upon it.

I have encountered it in my boat. In 1925 we had to find a hole and could not find any hole, and we broke the propeller shaft, lost it. The garbage consists of all kinds of fruit, cabbage, and any kind of vegetable you could imagine. [**983**] Once in a while you find some dead chickens or something. It does not smell very sweet. It damages the nets sometimes. You get a strong tide—and I have seen it cut the net right in two.

When we have a strong tide and a northeast wind, it cuts it off, you know. I have an investment in my fishing pounds of about $40,000. As to the damage done by this stuff, at times I have seen as much as $2,000 or $3,000 worth in one storm; the stuff would pile up, and take the nets along. I get in my pounds 800,000 or 900,000 pounds, in one season. [**984**] I have seen it reach right from shore out to the lifeboat. I think the lifeboat lies out about three miles, one solid streak. You could not tell how thick it is. I suppose about a foot or two deep, and about 300 or 400 yards wide.

On *cross examination.*

I get 800,000 or 900,000 pounds of fish a year.

We start some time in April and fish until January, and sometimes later. I fish from nine to ten months out of the twelve. When the water gets too cold there is no fish; we have to quit; there is no use fishing then. The return 800,000 or 900,000 pounds of fish would bring me depends upon the market. Sometimes it is higher and sometimes it is lower. [**985**] Sometimes I think we get one cent per pound; sometimes I think we get as high as 25 cents a pound. It ranges between 1 cent a pound and 25 cents a pound. I probably get somewhere in the neighborhood of $50,000 a year. It ranges anywhere from $35,000 to $50,000. It depends on how the market is. The amount invested, as I testified before, is around

$40,000. I do not get my entire investment back in approximately one year's time. The expenses have got to come out of what we sell, and the expenses is high. Our expenses run somewhere around $30,000.

[986] On *re-direct examination.* We reset out poles every year. How often I replace my nets depends upon what kind of condition of weather we have. If we have westerly weather, we have not got the nets lost; if we have easterly winds, sometimes it does not last the season out. I employ eighteen men.

FRED WEBER. On *direct examination.* I live at Monmouth Beach. My business is fishing. [987] I have been at that off and on for about ten years. I do trap fishing. By that I mean pound fishing. I am associated with my father, Frank Weber. I fish one of the boats. I have never seen the garbage dumped at sea. We do not go that far out. The farthest I go out is a mile and a half. I have seen garbage in the ocean as far as you can see from wherever we are; if we are offshore, as far as we go; it is a mile and a half, and you might say half a mile off from that. If it is a calm day, you can see the drift stuff out there. It consists of crates, barrels, garbage, fruits, vegetables, sometimes dead animals, and lumber—short lumber. Sometimes it is a narrow streak 50 or 60 feet wide, [988] and sometimes it is quite wide, about 200 or 300 yards or more. Sometimes we strike it; as far as we run it will be drifting around, I mean continuously from the shore out to where I go. Sometimes we have to dodge the stuff all the way from the beach out to the pound. You find it in the undertow all along the shore, and on the shore, and all over. The effect it has upon our nets is that it gets tangled up, and sometimes you have to hang around there around three or four hours, and take the drift stuff out.

For Plaintiff—William G. Pressley, direct.

It does not particularly interfere with our landing on the shore because the sea keeps it pretty well cleared out, but when we go to sea, we have to clear the beach out before we can get in the water.

WILLIAM G. PRESSLEY. [989] On *direct examination.* I live at 45 Atlantic avenue, Long Branch. I have a fishing business, together with some other businesses. I have been in the fishing business off and on about 14 years. I do pound fishing, the same as Mr. Weber. My fishing pounds are right off Normandy, that is, between Seabright and Galilee. I have an investment there of about $12,000. I would catch about half the amount Mr. Weber does, because I have got two less pounds. I employ [990] ten men. I have encountered the garbage. I have found in the way of garbage anything in the way of discarded fruit and vegetables, boxes and barrels, and once in a while a dead animal. I have seen it sometimes as big as a city block. Sometimes you will see a bunch of it as large as a city block, as I have said, and then you go and look forward half a mile or a mile and see a bunch of it. I have seen it right on the shore. Last Wednesday I saw it at Long Branch on the beach in the morning, and in the afternoon I saw the same size of garbage at Seaside Park. That was Wednesday of this week. Exhibits Nos. 157, 154, 153 and 156, [991] were shown to witness. (Examining photographs.) It was about the type of that garbage, I would say, of those two pictures (indicating). I did not see that dead turkey, though. There was orange peels and grapefruit peels and pieces of wood and trash like that (indicating), and other kinds of vegetables similar to what these pictures show. The effect this garbage has upon my fishing pounds is this: sometimes the boxes and barrels will get in and tear the nets, and they tear the pockets and let the fish out. The damage I suffer from that cause is hard to tell. If a box or barrel tore a hole in the net

and let the fish out, you suffer a whole lot on that particular day. The amount I spend a year to maintain my nets or correcting the damage would be in some seasons different from others. But I would dare say that, with two pounds, the actual [992] repairing of our nets would be between $1,000 and $1,200. I am familiar with the shore in the summer and bathing on the shore. I have lived within two blocks of the shore all my life, right where I can see it from my home. Sometimes the garbage kills bathing and the people will not go in. They run the risk of stepping into different kinds of garbage or grease from the garbage which floats upon the sand, or the risk of stepping upon a nail which is in the boxes and barrels, which happens sometimes. I have known that to be the case at Long Branch, where people have stepped on a nail and had to call a doctor.

SAMUEL SICILIANO. On *direct examination.* [993] I live at Long Branch. My business is pound fishing. I have been in that business for five years. I have had experience with the garbage. I have seen it right in my own pounds. My pounds lay half a mile from shore. I went this past summer, I took a trip out to sea with my men, and when I got there, I seen the driftwood and this garbage right alongside my nets. I seen driftwood thrown against the trap, and the trap line rope—and pieces of my net were all down, and nails in this driftwood, right in the mesh, and cutting the net right off. I have an investment close to $12,000. This last year we caught 40,000 pounds. [994] I employ nine men and with myself, ten. My observation when I went out there, I have seen this garbage pretty regular from my pound offshore, pretty near a mile or a mile and a half. The direction was northeast. It was moving down from the northeast. I should judge it was a stretch of a quarter of a mile wide. I could not tell you how long. I do not know how far one could see from a boat out there. You

could see quite a distance; I know that. I can see it on the beach. It is an awful mess; it is an awful mess. Why, the sun shines on it and makes it smell, and everything, you [995] know. We cannot do nothing where we land, but the bathing people suffer a whole lot. But we cannot do nothing with it. Sometimes we collect it and bury it in the sand. It interferes with my boats at times. But especially what interferes with us is the nails in these boards. I have had horses step on it at times, and we have to be careful of that.

JAMES WILLIAM JONES. On *direct examination.* I live at Long Branch. I am Mayor of the City. [996] I have lived there all my life. The resident population is about 20,000 yearly, and between 30,000 and 40,000 increase during the summer.

I have a statement of the tax valuations for 1927. (Examining paper.) Our tax valuation for 1929 is $20,847,500. I will say that the investment along the beach is probably half of the total assessed valuation of the city—that is, from the Elberon to Monmouth Beach. The city has approximately two miles of boardwalks and has spent a lot of money on bulkheads and jetties, and on a new paved boulevard there, and on lighting, [997] ornamental lighting. The boulevard is approximately four miles and a half long. I have no figures with me to show how much the city has spent for public improvements along the shore. I can get them for you and bring them to you next week. Our beach front is four miles and a half long.

We had a lot of trouble with the garbage for a long, long while. [998] The City of Long Branch is one of the oldest resorts along the Jersey coast, and one of the finest, and it has been honored by having several different Presidents have their summer homes there, and the garbage pollution is something that, when it is real bad, almost entirely stops bathing. It has been talked

about for years by everyone all along our coast, both by our natives and our summer visitors. There is no question but what it should be removed, and it should not be any trouble to remove it—if New York would build a few incinerator plants, it would probably help develop this whole coast; there is no question about it. I do not think there is any question that the garbage on the beach is a retardation of development of the ocean front property. I am personally familiar with the beach. I examine it myself. [999] The garbage consists of a great many different kinds of pasteboard cartons and grapefruit and boxes and pieces of sticks—all kinds of garbage. Your ocean is used for bathing purposes, and there is no question but what that stuff floating around in the undertow, where the people do their bathing, is a very unhealthy condition and a very dangerous condition, from stepping on nails or getting tangled up in that stuff, because mostly everything comes in; there is lots of stuff that comes in there that would be hard to describe—tangled up masses. There are some broken bottles, but more whole bottles, I guess, than broken ones.

We have a Bureau of Information in our town. [1000] The complaints from visitors regarding the garbage are almost too numerous to repeat.

We have cleaned up the beaches, and done everything that was physically possible for us to do, and we have talked to Attorney-General Stevens for several years, to see if something could be done to stop the garbage from coming in on our beaches. We talked to him before he was Attorney-General, when he was Senator. He was Senator some eight years or more. I did not make any personal complaints to New York City about the garbage. I understand there have been such complaints by former mayors.

On *cross examination.* [1001] I do not know how those complaints were made to New York City.

For Plaintiff—Judge Harry Truax, direct—cross.

JUDGE HARRY TRUAX. On *direct examination.* I live at Long Branch. I am an attorney at law and police judge. I have lived in Long Branch for 48 years. For 20 years I have gone bathing, except during the wartime, almost every evening at 5 o'clock, when the weather was right. Early in the mornings I have walked, when the weather was good, from at least West End to my office, along the boardwalk. [1002] I have seen the garbage on the beach. Sometimes in the mornings the beach will be strewn from West End to Broadway with garbage. That is about a mile and a quarter. Sometimes in very large quantities. I have seen the city men attempt to bury it at places where people would bathe. The garbage would consist there of wood strips; a lot of straw at times would come in, such as used in packing. I remember one time the beach was strewn with chestnuts, the large Italian chestnuts that were apparently damaged—I mean apparently condemned. I am not certain of the effect of this garbage on our beach, but I think that the water—that this will grind up the garbage, and at times, when there is no movement of current, the water will turn very dirty, so that people will not, or, at least, I would not, want to stick my head in it. I have seen it come in with wood and garbage at times, so that all the people on this particular beach that [1003] I bathed at left the water, and I have seen people refuse to go in the water on account of this dirty condition. I have identified only the strips of wood, I happened to notice it there. I made no record or memorandum. But I remember seeing parts of crates, or boxes, or barrel heads with New York addresses upon them, indicating that the case had been shipped to New York.

On *cross examination.* We have an Italian section in Long Branch. The Italian population of Long Branch, I should judge, is at least 3,000 foreign-born. I may be off on that.

[1004] FRED COOK. On *direct examination.* I live at Monmouth Beach. I have been in the fishery business for five years, pound fishing. My pound is at Galilee. I own five-eighths of them. We have two pounds. We have $12,000 to $14,000 invested in them. We catch around 35,000 or 40,000 pounds per year. [1005] I have had plenty of experience with the garbage in the ocean. I have never been out where it is dumped. I have been a mile or a mile and a half out when I saw it. I have seen out there anything that will float. It covers an area of about half a mile, offshore and extending on the shore, about a mile and a half along the beach. I have seen the areas of garbage a mile and a half in length and half a mile wide. It consists of barrels and cans and boxes and logs and garbage of all kinds, dead chickens, dogs and all of that stuff. Those logs come down with the tide and catches in [1006] the net and rip them up and tear them up and puts them out of business for a day or two.

It tears up the nets and we have to change them. It costs us to make repairs because of these conditions, I suppose, $1,000 or $1,200. We employ twelve men. I have seen the garbage on the beach, plenty of it. We have to move it to get our boat down; sometimes there are logs there 12 feet long, and I have to hook them off to get our boats out. There are bathing beaches at Monmouth Beach. Sometimes it is so that they cannot bathe. It piles up in windrows. We try to burn it or bury it, or anything we can do. Sometimes it grinds up, so that they cannot do it, and [1007] it smells and people will not go in.

I have identified names or addresses with New York addresses only on boxes and crates and something like that.

For Plaintiff—Garrett Irons Johnson, direct.

GARRETT IRONS JOHNSON. On *direct examination.*

Mr. Minard. I find in the Long Branch envelope some pictures which have your name on them. We will offer them in evidence.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 212" to "Complainant's Exhibit No. 221," inclusive.)

Exhibit 212 was an air photograph [1008] made three or four years ago by my firm. The negative was made by my brother. It shows a section of the ocean front at Long Branch, and includes the West End Casino, one of Long Branch's fine bathing clubs. Exhibit No. 213 is another aerial photograph, taken in the same section, but includes more territory. It also shows the West End Casino, and shows a number of the summer homes that are in the vicinity of it there. It shows the Hollywood Hotel. This picture is looking west. No. 214 is a photograph of Ocean avenue, Long Branch, near the Long Branch pier, showing a Hollywood crowd, made in 1927. No. 215 is a low altitude aerial photograph, showing the West End Casino at Long Branch. No. 216 is a photograph of the Long Branch beach, showing a typical summer scene in a good bathing day. No. 217 is the same as the preceding one. It shows [1009] bathers in the water at Long Branch. No. 218 is a typical bathing scene at Long Branch, showing the pier, or a part of it. No. 219 shows bathers in the water at Long Branch, and a small section of the beach, and gives a good idea of the crowds that bathe there. No. 220 is a photograph made for the City of Long Branch, showing a section of the beach south of the pier. Made by myself June 10, 1929. It shows some garbage and lots of driftwood on the beach. Exhibit No. 221 was made the same day as the preceding picture, a view of it farther south; this one is also south of the pier, and shows garbage and driftwood.

For Plaintiff—Bert M. Haley, direct.

BERT M. HALEY. [1010] On *direct examination.* I live at Long Branch. My business now is: I run a concession on the beach. I have been engaged in lobster fishing in Long Branch before for about 10 years. I discontinued that work three years ago. I have gone out where the garbage is dumped. At certain times of the season we fished there probably a month or six weeks. I have seen the scows throw the garbage from them. The only thing is, when you are out there the first thing you know the whistle would blow and the scow would open the gates and the garbage would be dumped out.

I have not seen any names or letters on the [1011] scow. They are loaded with all kinds of stuff, such as boxes, barrels, garbage; you see it at times dumped; you see it come to the surface, a lot of it. The wood and boxes and barrels and pieces of timber and stuff are mixed in this garbage, all in the same scows. I have seen the garbage cover two acres. I have had to come right through it. I have seen it from the dumping ground in, for, I will say, a mile area. It affects the lobster fishing. At times the gear was low, and they have dumped those scows; they would not dump them over our gears when we are at work; but on foggy days they would dump it [1012] and we could not get the gears up with the stuff covered over them. We have had to sail through this stuff with our boats. The sticks would affect your progress. The soft stuff would not affect your problem, but you would have to look out for wooden boxes. Among the garbage there is bottles, electric light bulbs, crates, straw—all kinds of vegetables, animals, big chunks of meat. That is all I can think of. I have had a beach concession for three years past. I run a shooting gallery on the boardwalk. I am familiar with the use of the beach, during that period. I have seen the garbage on the beach or in the [1013] water. It affects the use of the beach. You take Sundays, when excursions come down, if there is a northeast wind

blowing a little bit, it brings that stuff to the beach and sticks it in the surf, and prevents them from bathing. It interferes with the use of the beach itself. It litters the beach up, and the undertow on up the beach a ways, and it is in the undertow when it is coming in, and broken bottles and nails, and you have to be careful of it, and children will break electric light bulbs, and that is about as bad a thing as there is. I have never identified any object in the garbage with names and addresses on it; nothing but pieces of board that have New York on them, some Philadelphia, and the like of that. I could not say where they came from.

[1014] AUBREY PORTER. On *direct examination.* I live at Long Branch, New Jersey. In the wintertime I am a school teacher, and in the summer I manage a swimming pool. I have been in Long Branch for nine years and a half. As manager of the pool, I constantly have complaints from our patrons at the West End Casino of garbage floating in the water, to prevent them from bathing. Also on the beach, to prevent them from going down and even lying on the beach, unless it is cleared up. At times I have seen it so bad that it would take the entire efforts of two life guards, who have charge of the beach, more than half a day to clear [1015] out small stretch of beach. Sometimes we have had to send others of the employees of the plant down to help them. Exhibit 213 is a picture of our West End Casino swimming pool. As to cleaning the beaches our procedure is to pick up the large sticks that are cumbersome, and full of nails, that float in, laths of buildings that have been torn down, destroyed buildings, I assume, full of nails, box-board, etc.; tin cans, bottles, bottles washed up on the beach, and in thrashing in the undertow, I presume they get broken. We frequently pick them out of the water; that is, where the water ebbs and flows. And they had a great many people receive severe cuts and step on

nails, etc. We have had many people tell us that they would not return to West End another season for the summer, on account of the poor bathing, due to rubbish, etc., on the beach. We always clear it up as fast as we can, but when you go down in the morning at a quarter of eight o'clock and find your beach strewn all over with it, you cannot very well get it up before your people come in bathing, around ten or eleven o'clock, the busy hours.

The conditions of wind or weather that [1016] produce that condition is generally northeast. You get it more in a northeast wind than you do at any other time. Whether we get it at all when we have a west wind I would not say. I have never noticed particularly. We have had at various times inspectors from New York City come and look at the beach, and they have seen at various times the stuff that we have raked up, tin cans and sticks and stuff like that, etc. What we can burn, we burn. What we cannot, we have to take and bury in the sand. I do not know who these inspectors were. They have always had a blank to fill out, and told us who they were, and have gone on about their business. They have had identifications from the New York Department of Streets, etc.—or Public Works, I think it is; I do not recall exactly. The form of identification was generally in form of a letter for the purpose of informing us who they were and to ask questions whether we have been troubled with it or not, to get information about the garbage. [1017] I believe I have been asked four or five times in the last four years. Last year I remember a gentleman in the middle of the summer—in August, if I remember rightly. He said he had been traveling from down below here (indicating) all the way up, and he had found the same thing prevalent, the same condition I have just told you about. There had been a garbage litter previous to that. I have identified objects that would tell where the garbage

came from. On boxes and crates, I have found the names, but I have never saved them. It was all New York City material.

On *cross examination.* I do not remember the name of this man who represented himself as coming from New York. [1018] I could not give you a description that would enable you to find the man, I do not believe. He did not have any uniform. He had a New York car that he was in, if I remember. I did not notice whether it had any official seal on the front of it or the back of it, or license plates. I was busy at the time and did not pay attention. I do not recall whether he showed any badge or shield of any kind. I do not think I asked him for any. The last time I saw him was this last summer, 1929. If I remember correctly, it was during the month of August. [1019] I would not say he said he came from the Street Cleaning Department; the department of some sort that had the disposal of garbage, that is what he told me. He was a young man, I should say as old or a little older than myself; a little older, I should judge. Dark hair, if I remember. I would not want to say definitely whether he wore glasses, but I believe he did. I am not positive, nevertheless.

LANGDON COLES. On *direct examination.* I live at Long Branch. I have lived there [1020] all my life. I have been in the bathing business for about 12 years. I have had experience with the garbage, I certainly have. For the last 10 years we have had a numerous quantity of garbage, that is, all kinds of vegetables, sticks, bottles, once in a while we have a dog or a cat; pieces of meat. It leaves a terrible smell on the beach. It has a very bad effect on my business. The people will not go in bathing. We have four or five men clean up the beach; that is when we need it in a hurry. Sometimes in a whole season it takes around $200 or $300 in a season

to clean up the beach. And I have made numerous complaints to the city officials. I have two places, but around 700 bath houses altogether. I have not made any complaints to the City of New [1021] York.

I do not think I have ever talked to their representatives about it.

[1023] C. FRED CARR. On *direct examination.* I live at Long Branch. I am a dentist and also Commissioner of Beaches and Park, Long Branch. I have been connected with the government of Long Branch for six years. I have been Commissioner of Beach and Parks of Long Branch since May, 1928. My duties in that connection, particularly with respect to the beaches, are to see that the boardwalk and beach is kept clean; to take care of the necessary repairs on our playgrounds, jetties, etc. I have charge of the men employed on beaches. [1024] In the entire force I have five men, but I keep two on the beach constantly to take care of cleaning up the beaches. They clean up the rubbish, garbage, etc., that comes in. It comes from the ocean. It consists of almost everything, you might say, in the way of orange peeling, grapefruit, boxes, barrels, dead animals, poultry and various things. There is household garbage and there are bottles, cans and various other things. There is animal matter in it. You will find old decayed meats, chickens and things like that that are household. We do not maintain the same force on the beach the year around. [1025] In the wintertime I just employ one man, that is, during the winter months. He takes care of all that. Of course, in the wintertime we do not attempt to keep the beach clean. In the wintertime in some of the spots where it gets very bad, why, you have to bury it, and places right where it does not come under our restrictions, there right in front of our park, we do not bother with it. We apply this force in front of our general park, which consists of 500 feet

frontage, North Long Branch, which consists of 200 feet frontage, where the people get free bathing, and then there is another section there, in front of the Arcade, south of the Arcade, where we take care of it, where people do free bathing. Altogether I should say they would take care of about 800 feet of beach. That is not the full extent of Long Branch beach. [1026] The rest of it is let go, except by the private bathing concessions; they take care of their own. Private bathing establishments take care of their own. I have figures as to what we pay these people for this garbage cleaning. From the first of June until after Labor Day, the two men that we keep on the beach constantly cost us $48 a week. The rest of the year, why, we pay that man $30 a week. I go to the beach myself. I do not supervise the work on the beaches. I have a man that does supervise it. I go down to see that conditions are kept good; to see that rubbish, etc., is kept off the beach, so that people can go in bathing and enjoy it. Our beaches are used for bathing, principally. [1027] Also, people go down there and sit down; people enjoy sitting down and having sun baths, etc.

Our beach is maintained as a sort of public park, for recreational purposes. I have no information as to the numbers of people who use it for such purposes. It is extensively used during the summer months.

I used to bathe, myself, but I got tired of going down from my office at 5 o'clock and could not go in, and from year to year, so I gave it up last summer entirely. I used to close my office at 5 o'clock and go down and have a bath, and from year to year, and after that I would go down and would be such a rubbish and so much film on the water that I would not go in. It consisted of orange peelings and grapefruit and it looked almost like grease or scum on it, caused by this churning up of the garbage. [1028] For the last couple of years it has been pretty bad—pretty bad. I cannot say whether

it is worse then formerly as, of course, I did not observe it as much as in the last year and a half, since I have been on the ocean front. The garbage interferes with the bathing. It stops people going in; they will not go in, and they will not go down there and rent houses like they used to. I often used to have complaints, when I was on the Public Safety Department. The people just won't go in bathing. The frequency depends on how the material comes in. Some days you do not get it, and then you will get it for three or four days. I have identified objects on the beach as to their origin. [1029] I have kept samples. I have some of them with me. These I did not pick up myself. (Handing objects to Mr. Minard.) They were picked up last summer. I did not pick them up. They were picked up in my presence. They were not handed to me then; they were taken up to the record office and sent to me afterwards. One of the helpers who worked along the Long Branch beach picked these up (indicating). I was there the morning they were picked up and saw them picked up. They consist of a lot of milk bottle caps. [1030] Here are some billheads. The name and address on them is Louis Rosenblum, Receiver & Shipper, potatoes, cabbages, turnips and apples, New York and Brooklyn. The same thing all the way through here (indicating); they seem to be the same—no, here is another one (indicating), Sam Berger & Company, Fruit & Produce, 284 Washington street, New York. Here (indicating) is another one, Quinn & Werner, Hot House & Rare Fruits, 317 Washington street, New York. There are three of the Rosenblum slips; and one of each of the others. Here is a tag. That is Wuppesahl & Fischer, Commission Merchants, Fruit & Produce, 1006 Wallabout Market, Brooklyn, New York. There is another address on there, too; they have two addresses on there. That is the same. It is a register, The Bank of America, Market Branch, Brooklyn, New York. (Read-

ing from milk bottle tops.) This is Janison Dairy Company, Hoboken, New Jersey.

[1031] Q. It says, "Pasteurized and bottled at Delaware, N. J.". Is that right?

A. Yes.

Here (indicating) is one from Hiddenhurst Farm, Coleman's Station, New York. Here (indicating) is Sheffield's Dairy, 622 West 125th street; here (indicating) is one Sheffield's Dairy, 1055 Webster street. Here (indicating) is Borden's, 2848 Atlantic avenue. That, I suppose, is Brooklyn. Here (indicating) is M. H. Renkin Dairy Company, 131 Emerson Place, Brooklyn. [1032] Here (indicating) is Cuyler Farms, Borden's Dairy, Cohocton, New York; Sheffield's, 1055 Webster avenue; Borden's, 480, I think it is, West 129th street. Reid's Union Dairy, 531 Waverly avenue, Brooklyn. (Discussion of counsel.)

Q. Now, take these slips and tell us what they are.

A. Cochran-Turner-Crispo, Inc., Fruits & Produce, 257 [1033] West Tenth street, and 95 Murray street, New York.

Here (indicating) is one, American Cranberry Exchange, Cranberries, Main Office, 90 West Broadway, and 186 Chambers street, New York.

Here (indicating) is another one. I do not believe I can make that out. We have not got enough of it. This (indicating), is clearly M. Mandell & Company, 203 Duane street, New York.

Q. Now, this (indicating) seems to be sold to—are they all the same, C. V. Patterson?

A. Yes.

Mr. Crowe. There is no address here for Patterson, is there?

Mr. Minard. No.

For Plaintiff—C. Fred Carr, cross.

Mr. Crowe. What is there to show that Patterson is in New York, and not in some other part of the United States?

The Witness. This is Stanco, Nasta & Company, Fruit, Produce & Eggs, 1001 Wallabout Market, Brooklyn, N. Y.

Mr. Crowe. Stanco, Nasta & Company. That is a sales slip of something sold to Mr. Fischer. Is that right?

The Witness. Yes.

Mr. Minard. It is a carbon copy of the sales slip. [1034] Probably the dealer's copy.

Mr. Crowe. Yes. Well, these (indicating) are not carbons. These are originals.

These are evidently caps—I do not know whether it is milk or not; with a bottle of that size, I do not know. They are dairy products. This (indicating) says: Hoenig's, 409 Howard avenue, corner of St. Mark's avenue. This (indicating) is the Wilkin's Dairy, Known For Quality, 4611 Eighth avenue, Brooklyn. Here are the remains of a paraffin carton, a milk carton, Sheffield Farms Company, 1045 Webster avenue, the Bronx, New York City. They were picked up last summer. [1035] I do not know the day they were picked up. At the time they were picked up, the beach was in a very bad condition: that is the way this happened. All kinds of garbage and rubbish was mixed up with that on the beach. It was in a very bad condition.

On *cross examination.* From Atlantic Highlands to Long Branch is, I should say, ten miles. The boats of the Central Railroad of New Jersey come to Atlantic Highlands. I do not know whether or not bottles of milk are sold and distributed on those boats. I have lived at Long Branch since 1902, [1036] a period of 28 years. I have not traveled on those boats in years. I used to travel on those boats, but I have had no reason to travel on them, and generally go by train.

For Plaintiff—Thomas M. Gopsill, direct.

Q. Now, you referred to two men working on the beach. What other duties did they perform outside of cleaning the beach?

A. Practically none.

Q. They had some other duties to perform?

A. Well, once in a great while, when we do not have a bad day, we can use them on something else, but they are very seldom employed off the beach.

We do not have a large quantity of seaweed coming on our beach. I would not say none at all, but very little. As far as the seaweed is concerned, we would not have to clean the beach.

[1037] Q. What about what you have described as rubbish, being small pieces of lumber and the like, would you have to clean that up every day?

A. I did not say small pieces.

Q. You did not. What did you say—large pieces?

A. I said rubbish.

Q. And what else did you describe?

A. I described the grapefruit, oranges, bananas—

Q. Outside of that?

A. And animals. We have plenty of wood coming in on our beach. That does not necessarily come in every day. If we get a west wind we do not get it so very much. West wind naturally keeps it offshore.

[1038] THOMAS M. GOPSILL. On *direct examination.* I live at Red Bank, Monmouth County, New Jersey. I am a member in the House of Assembly from this District. I have been such for four years. I have lived in the neighborhood of Red Bank for twelve to fifteen years. I am very familiar with the beaches along the coast here. I have interested myself in the question of the garbage on the beach. [1039] I have done so ever since I have been bathing; ever since I have been down here. Over a period of time I have taken my family bathing at various spots on the coast—perhaps more or

less at the whim of the female members of the family. By that I mean that there were perhaps three or four years that we bathed at Seabright. Then we came down and bathed at what is familiarly known as Avanel, or perhaps more accurately is known as North Long Branch.

We had a bath house at the Monmouth Beach Pool, and this last two years we have been bathing at the Allenhurst Pool. It has also been more or less of a Sunday afternoon pastime, or a Saturday afternoon pastime, to go out on Sandy Hook for what are known as "beach parties" in the evenings. That would take in, if you please, the territory from Sandy Hook Beach down approximately to Asbury Park. And it has been a condition throughout the full length of the beach at those various places, that when the wind is right, bathing was impossible. [**1040**] I mean that we familiarly recognize an east wind as a wind that will bring in debris and garbage which would make it impossible for children to go in bathing. As far as I am concerned, it would be injurious—subjecting them to conditions which would be injurious to their health.

I have seen the garbage in the water, floating in the water along the beach. Extending on the beach, when the wind was east, you could see it 400 or 500 yards; you could see it a good distance out, when it was coming in, and there seemed to be no prospect of a recession of it, and we would go home. I have seen it on the beach plenty of times. [**1041**] The beaches were littered; the full bathing beach at the particular spot was littered with from watermelon rinds to egg shells, to oranges—garbage in the full sense of all that that means. I have seen bottles and cans. I do not recall personally seeing any animals. It has, or generally it would have a very deterrent effect on the use of the beaches. I know that in my own home I have a little girl eight or nine or ten years old now, and very often she will be anxious to go bathing, and the telephone would ring, and some

friends of hers would say, "The garbage is coming in," and the bathing would be called off. That would be a personal condition. Now, that condition unquestionably would spread. The general effect would be a very bad one, insofar as I personally have had complaints, a great number of complaints, in my official capacity, to try to have me [**1042**] create a condition which would stop this garbage. Officially, we have acted as far as we felt that the Legislature could go in the path, by protesting, and I believe we passed two resolutions, and if my memory serves me correctly, they were sent—I do not know whether they were sent to New York or not. I believe we protested to Washington.

And then we were advised, or information came to us, as I recall, that they would adopt some policy of building incinerators to treat all the garbage.

I have never personally introduced any resolutions in the Legislature. I was a member of the house when those resolutions were introduced. I have been in the house since 1927. I have picked up envelopes addressed to New York people—postmarked New York; stuff of that kind; and just with a sort of laugh you would walk along the beach and pick it up and say, "Look at this," and look at it and toss it [**1043**] aside. I have seen theatre stubs and stuff of that kind from New York theatres.

Q. Now, you speak about the people telephoning that the garbage was coming in. Is that a common complaint along the shore?

A. Oh, it has been so for the period I indicated, yes.

Q. So that it becomes a matter of constant observation and remark, by people?

A. By people, yes—by the parents, where the youngsters are involved that might want to go in swimming on that particular day.

Q. Do you know what effect it has upon the economic development of the coast?

For Plaintiff—Thomas M. Gopsill, cross.

A. Oh, naturally, a very, very deterrent effect, because the people that would ordinarily come down and buy real estate are going to be deterred from investing any money, if they feel that these conditions are going to continue. I know that I personally would not come down here as a summer resident, and I would not buy any property on the shore front, where the principal appeal is the beach and the bathing. We who live down here all the year around feel that we can give up a day's bathing, and keep the youngsters out of the water, because they can go tomorrow. But the summer residents, and I should think the hotels, would feel it very materially. [**1044**] I mean the summer residents who come down particularly for that. The bathing is the particular appeal to him, and his time on the shore is limited to a short vacation, if you please; if it is for two weeks and on two or three days out of the two weeks he cannot go in swimming, next year he will go some other place where he can enjoy the full extent of his vacation as he sees fit.

On *cross examination.* The year around population of Red Bank in the 1920 census was 9,800. We estimate it today at between 12,000 and 14,000. We have no summer population in the strict sense of the word at Red Bank. Red Bank is not a resort town. I mean by that, we are not on the shore, not on the ocean. We are four miles and a half from the ocean, [**1045**] the other end of the Rumson Road from Seabright. Red Bank is not itself—we are not dependent in Red Bank for our prosperity, if you please, on the summer trade—if you see the difference I am trying to make. We are not Asbury Park, Seabright or Long Branch.

Red Bank appeals more to the back country for our population or business.

For Plaintiff—Thomas M. Gopsill, cross.

The beach neither explains the origin of our development nor does our development to any extent depend upon the beach.

Q. And the information with regard to garbage on the beach would be as it was telephoned around?

A. It would be telephoned to the extent that it is a bit of a trip, you see, from home to the beach. In other words, it is an automobile ride of fifteen or twenty minutes, and Mrs. Dobson, and Mrs. Jones, and Mrs. Brown, with the youngsters, would take my car or somebody else's car and go to the beach, and would telephone when there that the beach is littered, and the party is off.

Q. And when they refer to littering, would they refer to any kind of material that was on the beach?

[1046] A. Not at all, because it was looked at entirely from the standpoint of the health of the youngsters. We recognized that as such it would not be injurious to the youngster in bathing, but a youngster diving through a watermelon rind would not appeal to the mother, as a rule.

If the beach were heavily littered with wood and lumber and the like, the same telephone message would not go forth, I would say, because the youngsters could, under those conditions, go paddling, and with the ordinary precaution it would mean a barking of the shins, perhaps, with lumber, but not the subjection to the possibilities of typhoid which the average mother would recognize in floating garbage. There has been typhoid in Red Bank, plenty. At different times, surely — the average amount that would happen in any community. There would naturally be a scare about anything of this kind. We get our water supply in Red Bank from [1047] artesian wells.

For Plaintiff—Garrett Irons Johnson, direct.

GARRETT IRONS JOHNSON. On *direct examination.*

Mr. Minard. I offer in evidence these photographs, as Complainant's Exhibits Nos. 222 to 228, inclusive. Exhibit No. 222 was made underneath the Brooklyn Bridge, at 9:30 o'clock in the morning, on Monday, January 20, 1930. It shows a scow tied to the dock, partly loaded with rubbish; it shows a truck in the process of dumping a load of ashes, and the scow, as nearly as I can identify it, is what is termed a sea-going type, marked D. S. C. R., and in the garbage—I will [1048] change that word garbage, please; I will say rubbish—I noticed numerous cartons — corrugated cardboard; I suppose they were cardboard boxes, papers, straw and wood shavings. They were easily noticed, especially because of their color and boxes of their size; otherwise, I cannot say what was in them, except I would classify it generally as rubbish. Exhibit 223 shows a dock at 117th street, a photograph made about 3:15 o'clock P. M.—107th street. It was taken January 20, 1930. It shows two scows tied at a dock. The nearer scow is D. S. C. K., and it appears to be completely loaded; it has a full load, and the scow that is near the dock, while nothing is shown as part of its load, while I was there, trucks were pulling up and dumping stuff in that scow, and you could see those scows on the dock [1049] there (indicating.) (Examining photograph.) That scow is loaded. but we were not allowed on the docks. We had to make these photographs from an adjacent dock, and this space (indicating) intervened between the two docks, and from that distance the best classification I can give is rubbish. Exhibit 224 is a photograph made at 107th street, at 3:15 P. M., January 20, 1930. It is the same as the preceding picture, and it shows the nearer scow as close as we could get to it.

That is the D. S. C. K. scow (indicating on photograph). That is the one we got closer.

For Plaintiff—Garrett Irons Johnson, direct.

Exhibit 225 is a photograph made at 52nd street, at 11:55 A. M., January 20, 1930. It shows a scow at the dock there. It is partly loaded. The truck has just dumped a load in there, which looked like hot cinders. In general, I would say that the classification of rubbish holds in this, except that at the right-hand end of the scow some small amount of the load was very readily seen to be garbage. I mean you [1050] could identify it by their colors; the red would be apples and oranges and the yellow would be the citrus fruits. That part was distinguishable to be garbage. The rest of the part of the load had an ashen color that did not indicate—

There is nothing in this picture to identify the number of that scow. That is a side dumper. That is (indicating photograph) 52nd street. That is the Hudson River. Exhibit No. 226 is another photograph made at 52nd street, at 11:55 A. M., January 20, 1930, on the Hudson River. It is the same as the preceding one. It does not show as well as the other one shows. It is the same thing, practically, except that this (indicating) was made from a dock, and then I got permission to go on this brig, and the scow is shown here (indicating), and thereby I [1051] got a clearer view of scow. This (indicating) shows the docks and shows a truck which has just dumped, and shows—I do not know what you call it—steam or smoke or something arising from it. Exhibits Nos. 227 and 228 were made at 107th street about 3:15 P. M., January 20, 1930, and both of them cover the same subject, but at different angles. Both of them refer to scow D. S. C. K. They show it loaded, and they show the scow nearing the dock which was in the process of being loaded, and show the trucks on the dock which were pulling up and unloading and going away while I was making these photographs. It is the same as the photograph made at 107th street. (Discussion of counsel.)

For Plaintiff—Garrett Irons Johnson, cross.

[1052] On *cross examination.*

Q. Just a moment. I have to clear up the record. I will ask the witness once more to examine all of these ex- [1053] hibits and tell me whether or not he wants this record to show that these (indicating on photographs) were scows in which ashes and rubbish and street sweepings were dumped, or scows in which the City of New York dumped garbage. Will you kindly clarify the record on that?

A. I can only repeat what I said before, that, as a general classification, I would say this was rubbish (indicating on photographs); that in Exhibit No. 222 I have said, and repeat, that I saw straw and wood shavings in that one. And that in Exhibits 226 and 225, whereas the major part of the loads I could still classify as rubbish, that on the right end of the scow, as shown in the picture, I can readily identify garbage, and that this right there (indicating) and here (indicating) in this picture (indicating).

Q. Yes. So referring to Complainant's Exhibit No. 225, the material as shown on that scow (indicating), which you classify as garbage, is that which is contained in the last pocket of the scow, shown at the right of the picture?

A. (Examining photograph.) Yes, the last pocket at the right.

Q. All of that garbage is on top of the ridgepole?

A. Yes.

Q. And there is no garbage contained in the pockets?

A. Not that I could see.

[1054] Q. Not that you could see. And in all of these pictures, that is the only material that you saw in these scows that you could positively state was garbage?

A. The only material that I could positively state was garbage. (Discussion of counsel.)

I say from the points I could view these things, the best

classification I could give was rubbish, and except in the few instances, I do not go any further into detail.

On the other hand, I would not swear that there was not garbage in there, because I could not see the greater part of the load; I could not get close enough to identify objects as small as that to be garbage.

(The photographs referred to were [1055] received in evidence and marked, respectively, "Complainant's Exhibit No. 222" to "Complainant's Exhibit No. 228," inclusive.)

On *re-direct examination.* I endeavored to obtain admission to some of the docks. We were not allowed upon the docks. They said we would have to get a written order from the Commissioner. [1056] I can say I have lived on the shore for years, and I saw many things in the general classification in this load that I referred to as rubbish on the beaches, that is to say, washed on the beaches in storms—plenty of papers—sodden papers; many cardboard paper containers and the like, lots of sawdust, lots of wood shavings, lots of straw. It is unbelievable how much straw there comes on the beaches. The same sort of stuff I have seen on these scows I have seen on the beaches. I believe, as a quick estimate, I have been here at least 18 years, most of that time within a quarter of a mile of the beach, and a few years within a mile and a half of the beach, and I have bathed and I have seen all of these things.

[1057] On *re-cross examination.* I did not apply to the Street Cleaning Department for permission to visit these dumping docks and take pictures. I came over to the City of New York, entirely on my own initiative, and without the knowledge of the city officials. (Discussion of counsel.)

For Plaintiff—William T. Sandlass, direct.

[1058] WILLIAM T. SANDLASS. On *direct examination.* At present I live at 6 Austin Court, Red Bank. I have lived there for six or seven years, until last summer. Then I built a little place connected with my bathing establishment at Seabright. I run a bathing pavilion at [1059] 73 Ocean avenue, Seabright. I have been in that business in that particular place for seven years, and down opposite the station for nine years; and with my father—well, from about 12 years old up. From the age of 12 years I have been in the bathing business. I have encountered the garbage in the water on the beach, plenty of it, in connection with my bathing business. It is just that if we get a northeast wind we will get garbage—dead animals. Some of the garbage will be grapefruit skins, orange skins, lemon skins, parsnips and carrots, once in a while you get carrots; and eggs that have been candled, that are rotten, that will float. Of course, all kinds of dead animals. Of [1060] course, that, they tell me, comes out of street sweepings; that I do not know, of course. All kinds of wooden boxes, tin cans, electric light bulbs, bottles. We will get bottles every once in a while with New York addresses on them, like they put up nowadays—pill bottles. It has a little metal cap on the top, and they put the prescription inside before they put the cap and pills in it. And there will be the entire parts of these things. Of course, we do not pick that stuff up, because it comes out of a sick room, and we do not know what it is, and we bury it and burn it as fast as it comes in. We have been encountering this condition of affairs ever since we have been in business. When we have an east wind, we have always had it. We have not made any complaints about it, no more than any of the rest have. It is just once in a while that a reporter will come down from a New York paper, or something like that, and ask the conditions, and we tell him what they are, and then we have had inspectors come down to see us, but the inspectors—somebody will telephone that there is gar-

bage, and in about two days afterward the inspector comes down, after you have it all cleaned up and buried and burned. Then he wants to know where the garbage [1061] is, and if you left it there you would have to go out of business. We have our place cleaned up at 10 o'clock in the morning—we have got to—so that people will not see that stuff. There has been a lot of those write-ups of the pollution of coastal water, and one thing or another; even the improvement of Long Island beach has been the subject of write-ups in the papers. It hurts business. People come down. You take a big part of my trade, will come principally, some from Montclair, Woodbridge, or up there. It means a fifty or sixty mile drive to come down, and they come down and find garbage or refuse on the beach, and do not come again. Some will call up from away up there, will spend 25 or 30 cents to find out if the situation is all right. Well, at the time you tell them it is all right; but you take every afternoon, our prevailing wind here is southeast; but if you get a north wind for a day or two, to drive the stuff south, and then you get a southeast wind, it will bring it on your beach just the same in the afternoon. There is very seldom a morning that you do not have to go out and clean up along what we call the water line; that is high tide, and you will find the tide brings it [1062] up; you will find little pieces of grease and fat, and if you leave that until the sun hits it, it gets rancid, and you can smell it quite a distance. The odor is bad; just as soon as the sun gets on it, this stuff gets rotten; that is all there is to it; it smells just like a lot of greasy garbage. The odor is so bad that there were a few times last year that were such that I am not going to live at the shore beginning this summer. My little place that I built there, I am going to abandon, and turn into a bathhouse, because I have built a home there, and would not stay out there; you get your southeast winds or northeast winds, and the odor will come

right there along the entire place and reach your home.

I have had complaints from my customers. You take it, just as soon as garbage comes in, I do not accept any more money at the window. I let people go out and look before they get undressed; if they want to go in, all right; but when they go out and see a lot of garbage coming in—you will see it in regular fields there, what we call windrows. [**1063**] The field looks almost as if you could run an automobile on it—out as far as you can see; then it will be a little patch here and a little patch there, like a broken box, or a five gallon can, bottles, and all that sort of stuff, sticking up in the air. I have seen it in the undertow. It will churn back and forth, and the bad feature of that is that, with the bottles and things, two bottles will come together and break. Now, that will come right down to where, at low water, your people will walk on these bottles and come back with cut feet. That is a frequent occurrence, quite frequent. It has been necessary to provide facilities at our establishment to take care of that situation, first aid—it is filled with dirt, and then for the nails that come in; there will be small box nails where the box comes apart with the action of the water, and there will be a nasty, sharp, little, rusty nail sticking out, and then it will wash up on the beach, and it will wash up probably at night. If you have a little sand mixed in with that, the board part of it will be covered, leaving just the [**1064**] nail sticking up in the sand, which you cannot see, and you will go out there in your bare feet and find the nail; as a rule, you will get two nails right close together in the sand, and you will get a puncture right in the bottom of your feet. I have been able to identify names and addresses in the garbage, plenty of them. You take—we saved them for a while, when the Anti-Pollution League started down here, but it seemed to blow up and did not amount to anything; so I— The purpose of that organization was to see about getting things under way to stop New York

City from dumping their garbage. That League functioned the last four or five years, to my knowledge. I could not tell you exactly the names and addresses, only that they were New York City addresses. I cannot say I have ever seen any from any other place.

On *cross examination.* I am at Seabright. [1065] That is six miles from Atlantic Highlands.

The biggest part of the season house are Red Bank people. The most of my people—you see, I am a quarter of a mile from the railroad station, so I do not get anything but automobile trade, people that drive down for the day with their families. It seems to be the rule with some of the New Jersey towns that, on certain days, they close up in the afternoon some of the stores, and the men folks take their vacation that way and come down with their families. Oftentimes the families will come down in the morning, get there about ten o'clock, and then the men folks will all get together in another car and come down right after lunch, just as soon as they can get their business closed up. I do not get any of that large daily influx of summer visitors from New York. I do not cater to that. I do know about some of those boats [1066] as my father did that at Highland Beach. The old place I used to run at the station will get that. I run more or less private—people that I know. I own the beach. I own the riparian rights and all, 275 feet on the ocean side and 200 feet on the river, right straight through to the ocean. It is a very narrow neck of land there.

CURLIES HOWLAND. On *direct examination.* I live at Long Branch. I have lived there for [1067] about 21 years. I am a brother of Jesse A. Howland. I am a contractor, building bulkheads and jetties. I have been in that business for about 30 years. I have had contact with the garbage in the sea or on the shore every

year since I have been on the beach. I haye seen all sorts of animals, dogs, cats and other different animals—all kinds of vegetables, fruits, grease, shavings, boxes, cartons and various other things. [1068] I can remember this condition as far back as when I was a boy about 6 or 7 years old. I am in contact with it all the time. I have seen it this past summer, working right along the beach. The quantity has increased with the years considerably. I have seen the garbage in the water, 300 or 400 feet from the shore. I do not go out to sea myself. I have noticed it at times, and it looked like a field of fruit growing out there, covering possibly 200 or 300 feet. I have seen it in the undertow. [1069] It shores it up and has the effect of grinding it up and forming grease in the undertow. I have seen it in regular rows along the beach for, possibly, a distance of 200 or 300 feet—possibly three feet wide, that the tide would leave as the tide fell back. This is at the edge of the high tide that I speak of. In pumping we get our water that we use on pile work from the ocean, and many a day we have had to shut down, through the garbage getting into the pumping and blocking it. The garbage naturally is a detriment to the beaches for [1070] bathing purposes.

My business is the development and preservation of the beach front by jetties. I have covered from Sandy Hook to Mantoloking. The purpose of these jetties is to build up the beach and protect it, to stop the inroads of the sea and form beaches for bathing purposes. Several of the places they use for bathing altogether; that is the idea of that. I am a property owner in the community where I live. I have identified objects in the garbage, with respect to names and addresses. [1071] I have seen boxes with addresses—New York addresses, I think—wooden boxes. I have picked up at various times little bundles of orders from different houses in New York, possibly a couple of hundred, tied up with a

string, that had been discarded, and various letters and other things from New York City; some from Brooklyn.

WILLIAM H. JORDAN. On *direct examination.* [1072] I live in Long Branch, in the part called North Long Branch. I am engaged in the general printing business. I have lived in Long Branch for 41 years. I have been familiar with the beach front for 41 years. I have had experience with the garbage on the beach in various ways —some in more or less a personal contact. I frequent the beach; my family frequents the beach; they would frequent it more than they do if conditions had not been so unpleasant. I have a rather close contact, in respect to people complaining to me about conditions being such that they did not care to come to Long Branch, even for a day, for bathing, or even for a week, staying at a hotel. I have had reporting to me boarding house [1073] proprietors and hotel proprietors reporting— Complaint has been made to me that business was not so good at a certain hotel, because of the fact that people had left the hotel when bathing conditions were—the expression, I think, was "horrible." The reason was garbage conditions. I was asking the question of how he found garbage conditions affected him. That was the answer I got. And it affected me, to a certain extent. The garbage on the beach is the subject of constant complaints from year to year, [1074] complaints on the beach garbage proposition for, I should say, about 20 years back that I have noticed, that have come to my attention, that I have taken notice of them. The garbage on the beach has increased in that time very much.

Q. Now, describe the conditions on the beach that cause this complaint.

If garbage is washed in there and left in there, in long rows, high piles, containing all kinds of refuse—if the next tide is not sufficient to take it out, keep it in circulation, as it were, it decomposes, in warm weather,

and it makes it very unpleasant to go anywhere near the beach, on account of the odors.

It is a hardship, and people will not do it, unless it is necessary to walk on the beach, through that stuff. That leaves the question of bathing outside; bathing is not considered and would not be considered by many people. In my observation, it is the class of stuff that is generally known as garbage. It is matter that is subject to decomposition. It is animal matter, vegetable matter, and small bits of wood, parts of crates, boxes and packages; cardboard boxes; papers—litter of almost every description. [1075] I have personally observed these conditions on the beach many times. I know that there have been complaints made to the City of New York, with requests that some action be taken to cease—or, rather, to help have the conditions cease on our shores. They were made, I believe, more directly to that feature, that they should cease dumping garbage so close to the shore, and I believe after that it was a question of that they would cease dumping altogether because, apparently, the distance did not have any effect, if the wind kept up a sufficient length of time to bring it in.

A. To the nearest of my recollection, complaints have been made for the last five or six years, almost constantly, that is, following one another with rapidity.

On *cross examination.* I did not make any of these complaints myself to New York City. [1076] I made them to the authorities of our city. I had nothing to do with the sending off of these complaints that I speak of. I urged them. I am referring to something that I have read, or an official report of some action taken. It was given out that such action had been taken in some newspaper. That is what I meant by "official." [1077] (Discussion of counsel and motion to strike out as hearsay. Denied subject to later motion.) I referred

to some hotel as claiming a loss of patronage. We have a hotel in Long Branch named the Hollywood Hotel. The person connected with that hotel who made the statement, I believe, was the clerk in the office of the hotel who had charge—or, rather, had access and accurate knowledge of why people would come and why people would go. I do not know the clerk's name. [1078] The Hollywood Hotel burned two years ago. It has been rebuilt. (Further discussion.)

On *re-direct examination.* [1079] It was not something that was said to the clerk. It was something that the clerk said to me in answer to a question.

JOHN W. FLOCK. [1080] On *direct examination.* I live in Long Branch. I am a funeral director. I have been in business there for 34 years. I am not connected with the Government at the present time. I had charge of the beach there from 1912 until 1920. I was beach commissioner of the city government. I am now connected with the Chamber of Commerce as second vice-president. I have been associated with the Chamber of Commerce in Long Branch 20 years. [1081] (Discussion of counsel.) When I was beach commissioner, from 1912 to 1920, with the exception of a period during the war, when the United States went into the war, I was made Mayor, and during that time I had no jurisdiction or supervision over the beach. [1082] But during the time I did have, we employed six men on the beach. Their duty the first thing in the morning, as soon as they arrived, was to clean the beach. Some days it took them longer than others. When we would have a northeast wind, why, litter came in then in abundance. That consisted of broken boxes, orange peels, rotten fruit; grapefruit skins and material of that kind, and I suppose you would call it rubbish or garbage. I have seen some chickens with feathers on—dead chickens. Of course,

they were dead—lying on the beach; and a few cats and some dogs. I have never identified any names or addresses on any of this material. I have been familiar with the garbage on the beaches since I was beach commissioner. That is the first that I had any supervision or the attention was brought to me in a personal capacity. [1083] I have heard of it and seen it in the newspapers years and years. It was a matter of general complaint in the community to the extent that the garbage and this rubbish would wash up on the shore, and there would be complaints from the police department to the city officials, a continuous round, year after year.

I have in an official capacity never made complaints to New York City any more than in connection with Mayor Houseman, whose name was brought up a few minutes ago in conversation. Mayor Houseman is a very, very sick man—paralyzed. I resigned as Mayor—let us see what year that was. I was there 12 years, and got sick and tired of it. I think I resigned sometime during 1923. And so I know nothing about it. I can tell, because I got something here from a policeman, and that was when I did resign. (Indicating object in witness' hand) —1922. [1084] I am not familiar in any way with this correspondence of Mayor Houseman any more than I made some reports and some inspections when he was making up his complaints, but I did not see any of the complaints after he made them. When the garbage comes in badly, it is impossible to bathe there, when this rubbish is in the undertow, chopping up backward and forward; those little fine nails, orange crates, strawberry crates, that break up and are scratched or rusty from being in the salt water—it is very dangerous; and those people that know anything about it or have had any experience with it, they quit.

What effect the garbage has upon the development of our community is hard to say; what the community would have been if we had not had this garbage. (Discussion

of counsel.) [1085] I can say only this, that the people came to the beach here to bathe. That is their recreation; it is their pleasure. The families go there and they sit on the beach in their bathing suits, and the children paddle around and they bathe, and if they cannot bathe, why, some probably have not automobiles or cannot go to the expense of hiring them; outside of the bathing, that is the attraction. The ocean is the attraction of a summer resort here. Our visitors are there on account of—it is on the Atlantic Ocean and the Atlantic Ocean is the attraction; there is no question about that. If it was back herein [1086] the country, it would not be a summer resort; that is sure. And if they cannot use the water in the ocean, why, they cannot bathe, and it deprives them of that pleasure.

On *cross examination.* I held the offieial position of beach commissioner between 1912 and 1920, Commissioner of Parks and Public Property. And I said during the period of the war, about six months, I was acting Mayor. During all of that time that I was commissioner, some form of refuse or garbage came in on our beach; more or less all the time, and sometimes worse than others. We always kept men employed during these summer months, when people bathed, to clean the beaches up every morning; that was the first duty they did, when I had charge of them, so as to have them as clean as possible in the morning. These conditions prevailed through [1087] the entire time that I served as Commissioner of Parks and Public Places, I would say; not all the time as bad as others; sometimes a great deal worse. When the wind was northeast, why, we got lots of it.

That was true in the years 1914, 1915, and 1916, as well as in any of the other years. You pin me down to the years and times now, but we have always kept those men to work on the beach, and for that purpose alone. I would not say it was worse or better. There

were men employed to keep the beach clean in 1914, 1915 and 1916 and 1917. Those men were not working cleaning up garbage and nothing else. That was one of their duties. The materials that they removed from the beach were the materials that I have described as garbage [1088] and litter. I did not call small trash and lumber garbage; I do not know what you would call it—this sort of litter, debris and so on. But I do call fruit and onions and stuff of that kind that would wash up on the beach as garbage. We employed those men to go to work on the beach in 1912, as I stated before, and that was their duty every morning, from that year and right on up until the time I resigned from the Board of Commissioners. I never kept any records of garbage at any time, but that is the reason why men were employed, to keep that beach clean.

[1089] Q. You do not know whether any garbage came in on the beach in 1915?

A. I know there was a lot of trash there right along all the time.

Q. Then you do not know whether any garbage came in on your beach in 1915?

A. Well, if there had not been garbage coming in there, we would not have kept the men employed for to take care of it.

Q. So you are of the opinion that garbage did come in on your beach?

A. I am of the opinion that litter and trash came in there, consisting of lumber, small trash, chips, like broken up boxes, strawberry crates, and so on. They were always coming in there when we had a northeast wind.

Q. Then there were periods of time when you would not get any fruits?

A. Yes.

Q. But you would get wood entirely?

A. No. There were periods of the time that you would not get much of anything, because the wind did not drive it in or drift it in.

Q. But the conditions which you have described, with regard to garbage and refuse and litter—did they prevail throughout the entire time that you were beach commissioner, [1090] or did they prevail only for part of the time?

A. During the summer months, while I was beach commissioner.

Q. And that would be the summer months in each and every year?

A. I would say so.

Q. From 1912 to 1920?

A. I would say so.

Q. Except for that period during the war, when you were not employed as beach commissioner?

A. I would say so.

AUGUST POPP. On *direct examination.* I live in Long Branch. I have lived there since I got married; I have been settled for 15 [1091] years; but I have been there before. But I went when I got settled, when I got married. At the present time, I am lobster fishing, and mackerel fishing. I have been fishing all kinds of fish, but that is my fishing for the time being. I do not fish in the wintertime. It is too cold out there. I have been lobster fishing, from my own hook five years—in my own business. I fished before that about 15 years. I fish anywhere from Raritan Bay to 35 miles out to Montauk Point. I have been out to where the garbage scows dump. I have been every day, if the weather will let us get out and get there. [1092] There is what you would call a mud dump, and a floating garbage—now a floating garbage, my estimate is, figuring out, is supposed to go about 30 miles, from what I could figure from the speed of my boat. Of course, we do not make

the time every day the same; it is according to the weather or the tide. So that when it is fine weather, an easterly wind, when the scow gets clear, and you can see the structure from a long distance, then it was about 30 miles—my average. But when it got stormy, with southwest winds, or southeasters or northeasters, I seen a floating garbage scow, in my estimation, when I had my lobster rigging, 18 miles, and when I was there, they dumped on top of my rigging. That is 18 miles from Sandy Hook. I do not know how far from the New Jersey shore—opposite here. I am now measuring 18 miles from Sandy Hook, 18 miles average. I do not say exactly, but about. That is Sandy Hook northeast by south. They generally [1093] go that course, because the compass is the same. We use a small compass, and we use quite some mechanism in the compass, and it varies, but that was my course, southeast by south.

The last five years I have seen—seven years, I have seen them dumping the floating garbage. I have seen them practically—not always—every day. I see "New York" on it, on the scows. There were letters on the scows. I remember one with an H on it, and D on it, and that is as far as I remember, because I was not interested in it, but I would say it makes me mad enough, and I make complaint to other fishermen, and they said, "What is the use? You must take the good as well as the bad." And I said, "Three weeks is gone, and I am out a couple of hundred dollars"—and what can you do? I can't do nothing. [1094] I will tell you what happens in my idea: What is heavy goes down, and what is lighter and drier, it floats. Now, they find all kinds of stuff amongst the floating stuff—tin cans, dead chickens, goods out of hospitals—and there is something worse that I cannot tell you what is in there; it cannot be explained here—everything. And then where we get the worst of the garbage in the spring, mackerel fishing—gets in our gill-nets.

For Plaintiff—August Popp, direct.

Q. What happens to this garbage when it is dumped out on the water?

A. Well, sometimes it is according to the wind, and it is according to the moon, and it is according to the tide. The moon controls our Atlantic Ocean. The moon controls the Atlantic Ocean, and lots of people don't know what it means. Now, you might laugh, and a good many will laugh, but the moon controls it. The moon raises your tide and lowers your tide. The wind will be jumping around all over, letting all that stuff go out there, and the wind always gets southeastern or northeastern on a full moon—we always get that wind. Naturally, it drives them in there, and generally the tide runs southeast—stronger towards the south than the north, [1095] and it hits against that point on Long Island, it hits there and cannot go any further, and it comes along the shore this way, and then—they get a full moon, they get easterly winds, and it brings it to this shore. The water around the scows looks all kind of colors. There is all kinds of stuff in there.

I have seen conditions out there that looked like that (indicating picture marked No. 13). I have seen conditions like that out there (indicating No. 16). I have seen that (indicating No. 17). [1096] Yes, I have seen something like this (indicating No. 18). Also, No. 19. Also No. 21. Also No. 22.

This photo shows to me the outshore—what we call the outshore dumping ground. Sometimes when—because I have not been on a scow when they dump it—after it has been dumped, sometimes the color is the average of like a quarter of a mile, or a mile, and sometimes more I could see. But I did not pay very much interest to a particular ground color, but sometimes it would be more than I could see out. [1097] I could not tell you what happens after it is dumped because I don't stay out there and watch it. When they get through it would break up, but I have seen it blow in the sea either way

the wind is going and the tide is going. I have been in and out and seen this garbage at various points between the place it is dumped and the shore. I have followed the area of it in as I came in. Sometimes I had to. I could not get through it. Once, as far as I remember, I traveled an average of 10 minutes' time, and my boat power is around 16 miles an hour. So that you can figure that out. I traveled for ten minutes continuously through a mass of this stuff, and the one that has the things in it what I have seen—I could not get out of it. [1098] I have never seen this material in the water all the way from the place where it was dumped in to the shore. That is the longest stretch I have seen. I cannot say that far. As I came in, I have seen it along the way. I have seen that, but not in one stretch. I see it off and on; big patches. There is a lot of things I have seen out there that I have seen on the shore, on the beach, when I do go on the beach, about the same, but I cannot swear to it that they are the same ones. [1099] There are some objects—bottles, tin cans—that I have seen, and oranges, of course, them all looks the same, and fruits and all kinds of rubbish.

Q. Now, I show you picture No. 12, and it was testified that this light streak in the water (indicating on photograph) is a slick or grease, or something of the kind.

A. (Examining photograph.) That is oil; that is a certain kind of oil after the dumping, always following that dumping.

If you were on the leeward side of the wind, among the outshore garbage scows, you have got to have a gas mask to stand by it. I am referring to the odor of this slick that follows the garbage scows more or less. I have seen this condition on the water, this greasy condition, [1100] and I know it costs me money, too. Now, I tell you, in my business, on the outshore, it dumps on top of our lobster lines. I follow lobster fishing in the middle of the summer. It dumps on that, and that

kind of cuts it up. Rags of all kinds comes from hospitals and anywhere and everywhere; it gets around it, and some of those rags get around the line, and I am afraid to handle it, and it gets on the line and you do not know what disease is on it. Blood stains are on them; but you have to get at them, and if you don't some of the lines we lose. There is outshore dumping and inshore dumping, where it is supposed to be only mud on the scow; but there is oil, some kind of oil, I don't know what; it is oil or tar, I don't know what it is; or some kind of dirt, when we are fishing there, too. Between Ambrose and Scotland, there is what we call a dump alongside a rocky spot. And we go there, and I fish in Ambrose channel last year, and I left a line there one day, and I left a line there the next day. And the dumping scow went out between the dump and Ambrose channel, and the day after I left the lines there, I went there again, and I picked out an average of 300 pounds of dead lobsters. And I found a lot of oil in the water. So I blame [1101] it on that oil that came from the dumps, from the mud dumps—and plenty of wood was amongst it. I have trouble with the outshore dumping of garbage with my boats. I have been in my own business for five years. I lost four lines. And one year I lost two lines. And each year I lost one. When they are new there are 35 pots on each line. With the labor the pots cost $3 apiece, besides the line. The line on the average is 32 cents a pound—not 32, 22. And we used six fathoms between each pot. I have never really figured out what it would cost, or the price of the line on each gear.

WALTER H. JARDEN. [1102] On *direct examination.* My home is in Philadelphia. I spend the summer at Mantoloking—part of it, not the entire summer. I have been spending the summer at the beaches, I should say about four years. My experience has been that we noticed

generally after a northeast storm, large quantities of what I have heard described here as litter—which means broken strawberry crates and boxes, and things of that kind, which piles up on the beach and remain there until it is taken care of—burned. And then we also notice large quantities of what we might term table refuse—orange peels, grapefruit peels; and we occasionally find a dead animal; I do not know whether it is dead cats or dead dogs—not often. We find pineapple tops. And we find, too, large quantities coming in of bottles that have contained medicine—of course, bottles that have the corks in them, which will float. I remember one occasion [1103] I picked up six baskets full, the ordinary five H baskets, of these bottles and had the rubbish man take them away. That might have been the accumulation of several days. I do not think they all came in on one day. But we have noticed that last summer and other seasons at Mantoloking. The effect of it upon the beach, aside from the aesthetic side, is that it makes it perilous for the people to go in bathing. This stuff is floating in the water when they come in, and anyone who takes a dive takes the chance of striking one of these box lids. The effect of the garbage is to make it highly unsanitary. There is some odor arising from it, and it is disagreeable to tread on it. The effect upon our beaches is that it is not a pleasant place for the children to play. There are times when it is actually unsafe to go bathing because of the large quantities of floating refuse in the ocean. What effect it has upon our community I do not know that I can answer. [1104] I would hardly know how to measure an effect upon the community. I do not happen to know what the resident population of Mantoloking is. It is not very large. I do not know what the summer population is. This garbage is a matter of common complaint in the neighborhood. It has been so ever since I have been coming here. As far as I can recollect, the last year—that is,

the summer of 1929—it was not quite as noticeable as it was during the summer of 1928, although I was not there so much last year as I was in 1928. I am now speaking from my own observation. I have identified addresses on the objects in the garbage or refuse. Occasional pieces come in with N. Y. stamped on them, as if they had been consigned to some New York concern. [1105] I do not know whether that was the City of New York or the State of New York. These bottles that I described I could not assign to New York, because they came with labels of all sorts of manufacturers on them.

MRS. WALTER H. JARDEN. On *direct examination.* I am the wife of the preceding witness. We bought in Mantoloking after one month's residence there, and did not realize the conditions, and if we had to do it again, I am quite sure we would go to South Jersey, where the beaches are [1106] clear and sanitary for children. A mother wants a clean, safe, sanitary beach for a child to play on. Those conditions are absent at Mantoloking because of broken glass, dirt and debris, and disgusting dirt—old mattresses, with the straw coming out. And Mr. Jarden did not remember, but he had either last year or the year before, a box with New York City plainly written out, and we kept that quite a while. Another condition is the smell; the odor from it is sometimes very disagreeable; it is intolerable; that is the whole truth. Our guests just make tremendous fun of it, and the garbage is terribly offensive, but the things I object to most are the rags and the mattress and things like that, for fear that children would pick them up or touch them.

You see, you can keep the beach clean, but you cannot keep it all around clean, and you cannot keep the children within the beach. By "South Jersey," I mean Ocean City [1107] or Cape May.

For Plaintiff—Conover Gaskin, direct.

CONOVER GASKIN. On *direct examination.* I live in Long Branch. I have lived there for 40 years. I have been a fisherman for 40 years. I don't do no fishing now, but I used to pound fish, and had a cold storage and ice plant there at Long Branch. In 1913 I give up the fishing industry. I have a fish market there now. [1108] I do not go out to sea any more. I have not been out to where the scows dump. I have seen garbage in the sea many times. I saw it 35 years ago. It has been coming constantly for that time. I saw it yesterday. There has been plenty of it from time to time. That is, what I call garbage, or bottles and all kinds of tin cans, dead chickens, dead ducks, dead cats and dead dogs, drive up on the shore when the wind is northeast, and float to the beach all along there. I have frequently been on the beach from time to time. My business brought me there. That has been occurring for this last 35 years. It is an awful odor on the beach. In the first place, sometimes on the beach you would [1109] have to bury it, the odor would be so great. And then it is bad to drive over with a horse and wagon, and nets and things, and you would find wooden boxes of all descriptions, and you would have to burn it up. I own the beach along the shore, and things comes along there. I have seen it for as far as you could look coming to shore; that is, not so very thick, but a small quantity at a time drive up on the beach, and in an area of 20 or 30 feet on the shore, there would be two wagonloads of banana skins, orange peels, and lemons and all kinds of stuff. It comes in often; that is, pretty often; whenever the wind comes in northeast, from where them scows dump offshore, why, it comes on shore. Sometimes it may not come in when the wind is from the northeast, but most of the time. It might lay off there and drift around, and as soon as the wind comes from the east or northeast, it will drive that stuff on the shore. [1110] I picked up a black duck package with names and

addresses, and I opened the package and it stunk like black ducks do— It was a package, and it was addressed to somebody on Madison street, and I thought it was a good package, and I took my knife and cut it open, and there was four black ducks. I have seen bottles and big milk cans or cartons comes ashore that have New York names on them, where they were built or made in New York. I have seen tags and letters and envelopes. I often saw tags. I might see them and pick them up and lay them down. I never made no note of them. They were billheads out of New York, from all over, pretty much.

[1111] On *cross examination.* The bottles and the cans would have the names of New York manufacturing concerns on them, those big milk cans. There was a dozen. We picked them up and sometimes we used them. There are a good dozen around my place. The letterheads and billheads would have the name of a New York concern on them.

HILDING SWENSON. On *direct examination.* I live in Manasquan. I have been in the fishing business for 25 years. [1112] I do pound fishing. I go out to sea. I have not been out where the scows dump. I have seen the garbage in the sea, lots of it, as far as I can. I don't go over two miles at sea, where we have nets, and then as far as you can see. From a point two miles out, as far as I can see, I see the stuff coming in. Sometimes sticks will come through the nets, and sometimes you will see a piece here and a piece there—every time a north wind or tide comes in. We have got two nets right straight from the land, and we have two, one of them four miles down, and between them two nets you can see the stuff drifting; that is four miles between the two nets. It covers substantially the distance between [1113] them. It consists of bananas, chickens, nail kegs

and all such things as that, banana skins, lemon boxes and so on. I see turnips, potatoes, cabbages. You see lettuce leaves and all such things as that—whatever they use on tables; slices of bread. I have seen lots of chickens and turkeys and ducks in the nets, as high as fifteen or twenty at a time, dead chickens. We have a leader a thousand feet long between the nets. And they generally catch all that stuff, the boxes and the chickens and all that stuff are drifting, and tin cans and bottles. I have seen stuff that it would take us from four o'clock in the morning until ten o'clock in the day to take that stuff out of the nets, and as long as it is full of that stuff, they never get any fish. There seems to be some kind of smell that keeps the fish away; as long as the wind is from the northeast we never get any fish.

And I have seen that stuff on the beach, so that I had to [1114] take my men—we had 15 men employed, and four horses and wagons, and we have moved that stuff. We pull the stuff up on the beach, and the stuff would be that thick (indicating). I have seen it as high as a foot thick—buttons and tin cans and banana peels and cabbages and turnips and everything you can think of. And we would have to move that stuff away before we could move the boats.

I work for a company. It cost between $25,000 and $30,000 to run the business. Most of it is to repair nets, every time we have a storm. I have seen it, with a big storm, that the nets can get through pretty good, because there is no stuff in the water. But if we get that drift stuff, it tears us all to pieces; there is no use and we quit. On the 20th of December we had a storm from the northeast, and we had boxes and nail kegs get in the nets, and swing there and tear them loose. [1115] The amount of fish we catch as a rule during the season depends. This last year was very poor, and we did not get so very much, but that all depends. We make a report to the State every year. I have seen

articles in this garbage or refuse that had names and addresses on it, [1116] lots of things, but I never picked them up or paid any attention to them. I have seen big check books and stubs from check books, and theatre tickets, and restaurant slips, but I never paid no attention. There was an address on them, but I never paid any attention. There was New York City mentioned on the check books, but I never paid any attention. I picked it up and threw it away; never saved it. That was in the month of November last year. I picked up a check book with stubs from a New York concern. I never paid any attention to it. I had it in my hands, but threw it over the side.

On *cross examination.* I do not know whether it was a check book on a New York bank. I seen the New York names on it, from different people. It was from a big construction company in New York, pay checks to different people. I just [1117] picked it up and threw it over the side. It was the stub. I did not pay any attention to it. I did not pay any attention except to see there was a New York name on it—different names from New York City. This was a check book that had checks drawn. I did not find the check. I do not know what bank it was. I do not know whether it was the New Jersey Bank. I could tell if I looked, but I just picked it up. I just saw the stub, but I saw a New York name on it. [1118] The stub indicated that the check was drawn to a person in the City of New York. That is all. I referred to my nets extending out two miles, and then at that point as far as I could see with my eye, the stuff would be coming in. At that distance I would see the garbage. I would see it at that distance coming toward me. On a clear day. I guess you can see two or three miles. So that I would see the garbage at a distance of five miles from the shore, I guess.

For Plaintiff—Edward Combs—William B. Kirsch, direct.

[1119] EDWARD COMBS. On *direct examination.* I live in Manasquan. I am a laborer now in a cold storage; formerly I was a fisherman. I fished for 35 years, up until four years ago. I did pound fishing. I have always seen plenty of the garbage. On the beach, in a northeast wind, it would generally drift ashore from a foot to two feet deep. [1120] It consisted of orange peels, lemon peels, bananas, eggs, bottles, tin cans, chickens, dead dogs, half a side of beef at one time. I have seen things out in the water a distance of two or three miles. It would be in streaks, maybe 25 or 30 feet wide, for a distance of two or three miles. I have seen it as far as 5 miles from shore; from that right on to the beach. I have never identified any names or addresses in the garbage. I never had anything to do with the disposing of it, or cleaning of the beach. Every time we had a northeast wind, it would gather in our nets. If the tide was strong enough, you would burst them and lose your catch of fish. We generally looked at it that two or three [1121] times in a fishing season you would have those tides and storms.

On *cross examination.* My fishing season commenced about the first of April. It ended anywhere around the middle of December. That is a period of about eight or nine months. During all the eight months we would have three or four periods when our nets would be broken, maybe more, maybe less. The matter on the beach which I referred to as being two feet deep had timber and wood in it. As much as half of it would be timber and wood.

[1122] WILLIAM B. KIRSCH. On *direct examination.* I live at Long Branch. I have been in the real estate business in Long Branch for about 7 years. I have lived in Long Branch about 15 years. I have seen a great deal of garbage on the beaches. I go in bathing

possibly three or four times during the summer, and in going in bathing sometimes it is pretty near impossible, with the amount of refuse on the beach, particularly, and sometimes part of it coming in. [**1123**] I have seen it in the water about 400 or 500 feet out. I have seen it in the undertow. I saw in the garbage refuse, such as has been explained here, practically — if you want me to define it, I will be glad to do so. The effect of it, particularly as to my mind, is the number of complaints that I have been getting from the various people that I rent houses to for the coming summer. The nature of the complaints is that the beaches are usually filthy, and they are afraid to have their children or themselves go in the water, because of the boxes and nails and orange peels and various other things which I would not care to name at this particular time, which are more offensive. Some of the articles in the garbage are so offensive that I prefer not to name them. It has a great deal of effect on bathing, for the simple reason that I have had any number of people tell me if the [**1124**] condition was not removed, they would go elsewhere. It has just this effect, that people come down there and spend $2,000 or $3,000 or $4,000 for a summer home, and if they are confronted with this condition continuously, they naturally go elsewhere, and it has a generally bad effect both upon real estate and business in general.

I have identified objects in the garbage with names and addresses on it on one or two occasions. I noticed particularly a part of a crate which was addressed to New York City; just where it came from I do not recall at this particular time. That is all that I recall.

On *cross examination.* The crate was addressed to a point in New York City. That is all that I have seen of it with [**1125**] any identification as to the point of its consignment.

For Plaintiff—Charles H. Sherman, direct.

CHARLES H. SHERMAN. On *direct examination.* I live at Long Branch. I have been in the bathing business since 1887. My bathing establishment adjoins the Tackanoosa Hotel, Ocean avenue. I own the property. [1126] I have had experience with this garbage in the water and on the beach. There is not much use to tell it; they have practically told the story so many times over.

It has been occurring ever since I have been on the beach, and that is a number of years, and it really does not get any better; it gets worse, if any odds. It is everything, in regards of, really—when you swear the Mayor, or ex-Mayor, if I ain't mistaken, he moved dead animals off the beach for me when he was the Mayor. I saw that. He was the Mayor at the time. The dead animal people came and moved the carcass of a steer. We have had dead dogs, dead cats, dead animals, dead [1127] dogs, and what I suppose you might call fat, what we call suet; and it lays on the sand, and the water keeps wearing it, and it really makes the water look like oil, don't you know? It is a thing you have got to bury; you cannot get rid of it any other way.

We tried to get rid of it; and the way I tried to take care of my own beach, and it takes sometimes all day with two men — not in the morning, but continuously; that is, before we allow anybody in the water, to protect them and keep them from getting hurt, with wood and rubbish. It is not with one tide, but drifts in there with the undertow all along. It did so last year.

And then we had to object to people bathing, because it was really dangerous; they would get hurt or hit with sticks or nails or rubbish that lay in the water. It occurs, naturally, whenever we have—of course, sometimes we have a northeast wind that we do not really get it. When we have any storm that amounts to anything, we get it, but not every northeast wind we do not

For Plaintiff—Charles H. Sherman, cross.

get it; maybe it will occur, in my recollection, we will say, on the average of three to four times a season we are bothered with that; maybe more or maybe less; it is owing to the weather. Sometimes we may get through the season and may not be bothered with it more than once or twice, and then again we will be [1128] bothered with it more often. In other words, with the condition of winds or tides in the proper direction, this stuff comes in with it. It has the effect on business that if it comes on a holiday or a Sunday, or a big day, it merely means no business in a way. Of course, if it comes in the middle of the week, when you do not get the transient trade, it does not mean so much. Your local trade—they have merely got to go or stay out. But with the transient trade it means the loss of that business. The local trade are citizens, the same as you are. To keep the beaches clean is no extra expense, any more than my own help. We do not go to any extra expense. Sometimes, as I say, I go out and work extra hours myself. That is their business, to keep the beach clean and take care of the people.

I have not identified any names and addresses on articles that come in particularly. I have picked up numbers of things. Of course, there are New York addresses on them. [1129] You will find European addresses on them, as far as that goes; they come from Germany. I have seen leads and pails and things that have been imported from Germany; that had really been burned into the wood. I would not call really the address, any more than where this pail had been manufactured. Among the things that I picked up, the principal things would be New York City.

On *cross examination.*

Q. That would be trade names of concerns in New York City?

For Plaintiff—Charles H. Sherman, re-direct—re-cross.

A. Well, different varieties of things, don't you know. Of course, you would not say they have all that, but essentially the biggest majority of them, I think the same as anything you would pick up, would draw your attention to it; very likely you would find New York City burned onto it by a stencil, or something like that, or pieces of wood, or something like that, such as a board or a sign, or something like that. The same is true of a boat—whether it came from New York City or [1130] came from a boat out of New York City, lots of things would call your attention to it, and you would see those names stamped on them or burned on them. You can't tell where it comes from.

Mine is a privately-owned beach. I own the beach absolutely, the riparian rights and everything else, and all the rights to land under water.

On *re-direct examination.* I used to go out to sea when I was younger. I have never been out to where they dump the scows. I have seen garbage in the sea a distance from shore. I saw it coming down; for some distance I could see it when it was coming in. [1131] You would see something in the shape of a flag or a kite, or something like that; you would see it coming ashore and coming up the beach. You could see it, you might say, for a mile out. And naturally, it would come along and hit my beach, and it would go right along to the south, the tail of it narrower, of course, running off like a jib; how long it extended to the south I do not know; but I know it hit my beach and was there in a windrow. I could see it coming in, like a jib, and, of course, it was shorter as it got there.

On *re-cross examination.* I testified that it was only when there was a heavy sea or storm with a northeast wind that we got it to any extent. That is right.

For Plaintiff—Sidney H. Rhodes, direct.

[1132] SIDNEY H. RHODES. On *direct examination.* I live in the summertime in Deal, and in the wintertime in New York at 40 West 86th street. In Deal I live on Runyon avenue. That is 1,500 feet from the beach. My business is merchant in New York City. [1133] My business address is Weber & Heilbroner. I live in Deal in June, July, August, September and part of October. I am connected with the government at Deal as Commissioner; one of the commissioners, one of the three. My branch is Streets and Parks. That includes the beaches. I have been connected officially with that work, I think, a matter of six years, approximately six years. I have not any data that will [1134] enable me to give you the resident population of Deal or the summer population. I do not know the tax valuation of property there.

I have had experience with the garbage coming on shore at Deal. I think it is one of the biggest menaces that we have in Deal in respect to health. I know at times that my own children, my wife refused to send them down to the beach until she finds out the condition of the beach. That seems to be the general practice in the community. The question of garbage is something that they ascertain before they go to bathe. [1135] My personal observation has been that, on our beach front, where our bathing pavilion is, we have to have our men come there early in the morning, to gather this up before the patrons get there. This is a daily occurrence. We have a municipal bathing pavilion. I believe the city paid around $200,000 to construct that; I believe it did; I do not know. It was built for bathing purposes. The chief attraction of Deal is bathing. It has the attraction that the country offers them, the drives and the good roads, etc. But the attraction to Deal is the good air. It is a beach resort. [1136] They come there for the ocean; they come to us for the ocean.

For Plaintiff—Sidney H. Rhodes, direct.

I have seen our beach littered with garbage, all kinds and all descriptions, depending upon the way the wind blows. There is not a thing that I have not seen. I can put it that way. I have seen everything from dead animals to fruit, meat, every kind of garbage in the world—boxes, things wrapped in newspapers, in New York papers. I have identified Campbell's Soup cans and things like that. That might come from anywhere. I have never seen any billheads or restaurant checks that hotel men use, or any papers of that kind, outside of newspapers. [1137] I do not know how much it costs a year to do this work of cleaning the beaches in Deal. But I can approximate that for you. There are four men employed for, possibly, two hours a day apiece. I imagine the cost would be between $1,000 and $1,500 a season, and I think that would be putting it mildly. I think it hurts our beaches a great deal, if we are required to clean up our beaches. I know that a great many men would use the ocean early in the morning, before they go to New York, or before they take their trains to go to the various places where they work, which, under the present conditions, [1138] they can almost not do. This is a subject of general complaint in the community. This has been going on for years. I think it has increased materially in the last few years. I imagine it has interfered with the growth of our community. (Discussion of counsel.) I know of three families who have moved away from Deal up to the Oranges. [1139] I know that Mr. Feldman, one of our largest owners at Deal, who has a very large house on the ocean, and who went in frequently bathing in the morning on his own private beach, said it was impracticable to use that beach, and he has not been to Deal for three years, and is living up in the Oranges now. That is an actual fact. [1140] (Objection as hearsay. Sustained.) Approximately 80% of the summer residents of our community, are residents of New York—people

who live in New York in other seasons of the year. That is only in my own judgment. Deal is primarily a summer community of New York people. The names of some of them who live there are Arthur Lipper, Julius Leeds, Horace Block, [1141] W. C. Durant, Harry Lauchheim, Milton Blum, W. R. Smith, Horace Wintheimer, Mr. A. L. Leeds, Alfred Wolmer, Max Fitzfelt; Mrs. Julius Keyser. Those are all New York City people that have summer homes in Deal. There are many others. I have never identified any objects on the beach with names or addresses on them.

[1142] THEODORE H. BEARINGER. On *direct examination.* I live in Deal Beach—Deal. I am connected with the government there as Commissioner of Finance. I have been such for 17 years. I am vice-president of the Essex Trust Company, Asbury Park. I have been in that business for 22 years. The assessed valuation of the property at Deal is about $8,000,000, [1143] at the present time.

Our sewerage system, bathing plants, bath houses, etc., cost almost $2,000,000. To protect or improve the beach conditions about half a million dollars was spent. We have jetties there, about 14. We have a public pavilion there, a bathing pavilion. That cost about a quarter of a million dollars. To remove garbage from the beaches costs a little less than a thousand dollars each year, for just the lower end of it; you see, that is the only part of it we own, the south end. The other part is privately owned, and they have taken care of that. The length of the part we own is, I would say, about 2,000 feet. The beach in our borough is [1144] about a mile and a quarter altogether. All of the remainder is owned by private shore front property owners. I have come in contact personally with this garbage. In the summertime I bathe every favorable day, when the garbage will allow me. One of my neighbors, Mr. Gottleib, has taken his

family to Europe one year, and to the mountains another year, and has come to me and said, "Bearinger, why can you not do something about the condition of the water and your beach in your municipality?" I think his home is in New York in the winter. We have other complaints of that kind. I think that is about the most frequent complaint that we have in the Borough of Deal. There is hardly a week goes by that somebody does not approach me when I am over at the Borough Casino, and ask me why we do not take steps to have the conditions remedied, and the bathing. [1145] Like Mark Twain, there has been a lot of conversation about it, but not very much done. To take care of it ourselves on the beach we have men that they employ there to go out each morning and work on the beach, and then again at night. We have an incinerating plant. We carry it off to our own incinerating plant and burn it. It is just garbage. I have gone into the water when you almost had to force your way into it, until you got out a little ways, right in the undertow, where it is washing back and forth in the undertow. The undertow holds it in there at high tide, and you almost have to force your way through that until you get out, say, a hundred feet from the shore. It consists of general garbage—turnips and dead animals, grapefruit rinds, orange peels, lemon peels. We get accumulations of it on our beach and as the tide recedes, it leaves that on the beach. [1146] In bathing, of course, I have only seen the area right there at our actual bathing ground covered with garbage. But very often I take walks on the boardwalk, after the bank closes; that is a favorite pastime of mine. I have walked along the boardwalk at Ocean Grove, and from Ocean Grove to Belmar, one afternoon, and the beach was actually yellow, from the water to the boardwalk, with orange peels and grapefruit and lemon peels; that is for a long stretch, that it was actually yellow. I have never identified any names

or addresses in this garbage. I never paid much attention to that. I do not recall the names of places or cities the names of which have appeared on elements of the garbage. A remark that was made to me one time by a friend of mine—instead of orange peels, this time it was Bromo Seltzer bottles, and this friend said, "New York must be a city of perpetual headaches."

CLEM CONOVER. [**1147**]. On *direct examination.* I live in Deal. I have lived there for 46 years. I am connected with the government of the municipality, as Borough Clerk. I have been Borough Clerk for 14 years. I have had experience with the garbage on the beach. I am the man that sees that the beach is cleaned up. We have four men during the summer. We start in around the first of June, and we work on the beach. Whenever we have a little storm, or a little flurry, we have to go down and clean up bottles—any kind of bottles you can get out of a drug- [**1148**] store. I guess they have every kind of a bottle there is in a drugstore on the beach.

Onions, bread, potatoes, orange peels, bananas, all kinds of cans, small and large; chickens, dogs, cats—I could not mention too many, because everything is there—chairs, bedsprings—everything.

That is what we find, and we find it—it will come in certain jetties, and it will be—when there is a storm, you will see it in the undertow for, maybe, 350 feet, and there will be anywhere from a foot, in some places, to 3 feet in the undertow, just washing back and forth. Boards—everything there—broom handles. It makes a terrible looking beach. It interferes with our bathing. We go after it in the morning. We have to clean it up. We get complaints from our neighbors. They will not walk on the beach; they are afraid to send their children down there; they are afraid they will be poisoned; they send their nurses, and they are afraid

they will pick up something, and they are complaining continually. They are afraid for their children. [1149] You can smell the odor there continually—onions and things of that sort, when you get in the thick of it—chickens. I have picked up objects there that had names and addresses on them and laid them down—theatre tickets and things like that. There were places in New York, theatres and things like that. But I never read them. I threw them to one side. This is a matter of common complaint in our municipality. I could not say whether it has any effect upon the municipality, upon the development of the municipality. I do not think it helps it any.

[1150] CHARLES D. LAYTON. On *direct examination.* I live in the Borough of Deal. I am the Clerk and Assessor and Secretary of the Casino for the Borough of Deal. I have been acting in that capacity for about two months short of seven years. I have had experience with the garbage on the beach. In the summertime my position consists of being at the beach all the time every day. The first thing in the morning, the first job at the Casino is to get the men out and clean up the beach. That is every morning; and if the wind should be a little to the northeasterly, it means that I have to call on Mr. Conover, who has charge of the other men, and get the trucks and the rest of the street department down [1151] there and clean up. The only particular time that I remember so well was—we have two beaches. We have the big Casino, and then we have a place at Phillips avenue, near the Phillips avenue bathing beach. One time last summer it got the best of us entirely at Phillips avenue, and we closed that place down, and there were four ton-and-a-half Dodge truckloads that I know came on that beach. The beach is 75 feet wide. But it is not like here (pointing to Asbury Park beach). We have a lot of sand. It is a big beach. And there

had been a northeast storm, and it just washed it right from the undertow, clean up to right under our bath houses. It was general garbage. But I can explain that a little better. There were orange peels, there were grapefruit peels—that is halves of grapefruit; they had been cut; all of them were cut. Then there were oranges; there were lemons; there was bread and quite a number of cats, [1152] a few dogs, chickens, paper, cans. I could go on naming anything that consists of garbage—general garbage. I cannot answer whether there was anything there that would indicate names and addresses. I have never bothered to pick them up to notice where they came from. We have to clean up every day. But with a northeast wind, a slight northeast wind, it is terrible. Every time there is a northeast wind, before I go out of my house I know I have the beach to take care of. That condition has been going on ever since I have been there.

Last year, 1929, was the worst year I ever had. There are some people that go bathing that it never interferes with. But there are times—at the big Casino we have a pool, and, of course, they can go in bathing [1153] in the pool. They cannot go in the ocean. If your children want to paddle, they cannot do it in the undertow, unless you want to have them cut all up. At that pavilion, they all have nurses, the one at the Casino. But at Phillips avenue, that is more public than the other, and we have people that come there from all over, and as I said, there was one day that we had to close down. You could not go in that ocean any time there is a northeast wind; I myself would not go in. But people that come down, and only have a week end, a couple of days, they will take a chance that they will kill themselves. I have often told the guards: "Do not let them in." But what are you going to do? They want to go in. It is that thick (indicating), a foot and a half. It just swirls. It is garbage. That pool has been built—

that pool was built with the Casino 20-some years ago. That is before my time.

On *cross examination.* [1154] In this matter that comes in on our beach there is wood there. I could not say just how it comes in. It washes up. Yes, there is wood there. We get wood and everything. I would say that there is more garbage, substantially more garbage than wood, because when the wood comes in it is generally logs, tremendous big things. Of course, they batter around and they break up. When they come, you will see them 10 or 12 feet long—timber. As to whether there is usually some garbage attached to or connected with all that timber that comes in, I have never gone into it like that. You see it washing back and forth.

[1155] GEORGE C. ANDREWS. On *direct examination.* I live in Ship Bottom Beach, Arlington, in the summer, and in New York in the winter. Ship Bottom Beach, Arlington, in an air line from here is probably 30 to 35 miles. It is 64 miles from the lower New York bay in an air line. It is down along the coast about half-way down to the Cape, down along Beach Island. I have been going down there since 1916. I am connected with the government down there. [1156] I am the Mayor of the Borough. I have been Mayor ever since 1926—four and a half years. The all-the-year population is about 300. Our summer visitor population varies according to the season from 1,500 to 3,000 people. The chief attraction is the most wonderful beach on the Jersey Shore, bathing, fishing, hunting. The assessed valuation of our Borough is approximately $1,100,000. There are a number of boarding houses, but no hotels.

That represents possibly, ten per cent. of the assessed valuation. We have trouble with the garbage down there occasionally. [1157] It comes from the ocean. I see it out in the ocean; how far out depends upon your visibility

in the experiments. You can see it half a mile most of the time. The areas of garbage in the ocean is something I have never taken any particular attention of. But you see it floating all over the surface of the water as far as you can see it. When it comes on the beach, you see it in the water, at the shore, in the undertow, or at the surface. It is driven up by the surf onto the beach. As a rule, when there are heavy northeast storms, our beaches are almost covered with water, as the storm recedes, the water leaves the stuff on the beaches. Four or five loads, I think, is the most we [1158] have had at one time. The amount we have spent in a year is included in our garbage contract, and I believe they add about $300 in the contract to cover that cost. We make a contract by the year with somebody to take the garbage from our beaches, as well as the houses. That is a part of our regular contract appropriation.

This garbage delays the use of the beach for a day or so until they can clean it. The principal menace is the bottles that come ashore. The children will break them, and children and grown folks will cut their feet badly. We have had several pretty severe accidents by people cutting their feet upon those things. I have seen boxes and crates and things of that kind. [1159] But I have never made any record of the names. I know they are New York firms—commission merchants; egg crates and things of that kind.

I have not seen any papers or documents; I have never noticed any of that. There is no complaint about the garbage in our community since our men have been cleaning up. Naturally, there was a great deal of complaint previous to making the contract. The only way that we can use our beaches is to keep at work at it to keep cleaning the garbage off. I don't think the presence of the garbage has any effect upon our community, or the development of it, because we only get two or three storms a year that bring that in. It is only on the very long

storms that we get that. In other words, it is only when the wind endures a long period of time that it reaches the distance of our beach; when the storm runs from three to five days we get it. That is due to our distance down the shore.

[1160] ISAAC VAN TINE. On *direct examination.* I live in Long Branch. At the present time, real estate is my business. I have lived in Long Branch about 38 years. I have not been in the real estate business all that time. I was in the photograph business for 30 or 35 years. I am very familiar with the beaches in Long Branch. I have had contact with the garbage. [1161] I have never had the privilege of taking it up, but I have walked through it, seen it, smelt it, etc. I have been familiar with that ever since I came to Long Branch. It depends on the weather. Some seasons we do not have so much trouble; other seasons we have a lot of trouble; it depends upon the tides and the weather. It is all a question of direction. I could not say whether there is more or less of it in recent years. The garbage is unsightly, and sometimes, if it lies there a while and the sun comes out, there is an odor from it, and then there is stuff repulsive looking; it is not at all sightly. It is a nuisance. There is everything imaginable. There is fish and dead chickens, dogs and other things. Then we have decayed fruits and decayed vegetables. They all add to it. I have identified names or addresses [1162] among the garbage just merely out of curiosity, at times. But I have never done it—I was not there looking for evidence, and I had no desire to memorize anything of that kind. I have seen the name New York City. I have seen marks on bottles. Most of the bottles picked up, the labels are washed off. As to papers or any other things that had addresses written on them. I cannot recall at the present time anything of that kind. This garbage is an expense for one thing, to keep it clean,

and there is always a certain amount of it that is not taken up right away, and it is unsightly. You take the bathing plants, and they always have their places cleared as soon as possible, so as not to interfere with bathing; but the adjacent places are left there sometimes for some time, so that it is left on the beach and is unsightly. I imagine it has an effect upon the real estate business. I have heard people speak of it several times. I do not know whether it has any more effect than the general conditions. I have heard people speak of it. [1163] It is a matter of general complaint in the community.

NEILS JACOBSON. On *direct examination.* I live at 20 Center street, Seabright. My business is fishing. I have been fishing for the past 20 years at Seabright. I do net and hook and line fishing. I go 20 miles from shore, sometimes. I have been out where the scows dump their [1164] garbage. I have seen them dump their garbage, I should say, 100 times. I was out there to see them last summer. After they turn the buckets loose in them dump scows, it does not take very many minutes before the scow settles on one side and then the other, and then she raises all up, and then she pulls away, and there is the whole pollution lays on top of the surface there for an area anywhere from about 300 feet—after it spreads all out. Then the tides and winds take effect on it and carry it on. I have had difficulty with it in operating my boats lots of times. [1165] When you go into the garbage pollution out there sometimes you will find the garbage and all the tide streaks coming together with the logs and the garbage and the boxes, and the cans, and all such like that, and you cannot run through it with a small boat; you have to back away. On the dumping ground that stuff contains anything that you call garbage that is dumped there. I will say orange peels, grapefruit, corn, anything in the line of garbage that would be throwed away. It does not contain any wooden

articles as a rule. You don't get much of that off there. The wooden articles dumps over there in shore in another place. You do not see much wood or parts of crates in this stuff that is dumped out far at the place I speak of as a rule. It is mostly garbage. You will see some crates and things. There are bound to be some crates into it. [1166] I have seen dead dogs in it. I cannot say what else—cats.

In my trips back and forth I have observed that garbage moving with the wind. I have seen it moving toward the shore. When it starts to move, it is stretched out.

Q. In any particular direction?

A. No, it depends on which way the tide affects it and carries it. I have seen it carried toward the shore.

Q. For what distance, or what part of the distance from the dumping grounds to the shore, have you seen it strewn around on the ocean?

A. I seen it no more than 3 miles today before I came in.

[1167] I have seen the dump from the dumps. I mean I have seen the garbage from the dumps today. I come to the beach at quarter of two today. I have been at sea today. I found the garbage out there about three miles out of Long Branch. I saw for about half a mile a streak of it there—I should not exaggerate.

Q. Between the dumping grounds and the shore itself, in your traveling back and forth, what proportion of that distance have you seen the garbage strewn along?

A. Well, you see, when they dump their garbage, where they are supposed to dump it, the current mostly runs south and should carry it in a southerly direction, and maybe the currents may change, from the variations of the wind, and turn around and drive it in to the shore, and another current may come and drive it north again, and you may get a current from [1168] the northeast that will switch it and send it right clear in to the beach.

For Plaintiff—Neils Jacobson, direct.

Q. Have you ever followed the garbage in coming from the dumping grounds, and seen it all the way to the shore?

A. I did not make a practice of following the garbage in, because I was not interested in it at that time.

Q. I mean all the way from the dumping grounds to the shore?

A. Do you mean continuously?

I have seen it moving to the shore at different times. I cannot say that the same garbage that I have seen dumped out there, I have seen again floating, but I have seen the garbage floating in the water. But whether it is the same garbage I saw dumped, I could not say it was the same garbage. I have seen the garbage anywhere from 4 or 5 or 6 or 7 or 8 or 9 miles right on out.

Q. Have you ever identified any objects in the garbage that you may have seen lately, like a can or box or some board [1169] or article?

A. I never took notice of anything like that.

I have seen garbage close to the shore. I have seen lots of it on the shore. The only effect it has on my fishing, was when I was lobster fishing offshore about three years ago, about 18 or 20 miles, or 15 miles, where they are supposed to dump it; and when they are dumping all that garbage, and you got a storm, it throws it around, and I lost all my gear, and it cost me $1,500; and I got all kinds of garbage, rags, bed springs, and anything that you might mention. Those are the things that sink. And I lost my gear. That is the only effect it has on my fishing. On this beach it does not affect me. I do not have any trouble to get my boats in and out on account of the garbage. It has to be a pretty heavy garbage to hurt your boats. I have identified lots of pieces in the garbage [1170] to show where they came from; from some of the big offices in New York, where they throwed out, I suppose, their monthly reports, yearly reports, or bills of lading, or something like that. I have identified those lots of times. I never took par-

ticular notice to anything else. I won't vouch that it is the O'Brien Brothers that had the barges out there today or not. I don't know whether it was the O'Brien Brothers at that time or not.

These garbage scows all have numbers on them, as a rule. I never took notice of the indication.

[1173] MAHLON R. MARGERUM. On *direct examination.* I live about eight months in Ocean Grove and four months in Trenton. I have lived in Ocean Grove about 50 years. I am connected with the State Government at the present time. I am a member of the State Board of Taxes and Assessments.

I have also been for the past 18 years or more a member of the Governor's staff. The summer White House of the Governor is at Sea Girt. [1174] During that time, it has been my habit to spend the summer at Sea Girt, two or three months, July and August, during the entire encampment down there. During that time and during the 50 years that I have been familiar with Ocean Grove, I have been familiar with the beach front. I have been on the Board of Taxes and Assessments for 12 years. I am in a position to express an opinion as to the importance of the beach front and the beaches with respect to the development and ratables of these shore communities to a certain extent. I do not think that I would be as much interested in the shore as I was years and years ago, before they had got so much pollution, especially if I had children to bring up and wanted to see the bathing beaches. I do not think the shore towns would have had the value they have without their beaches. [1175] Just in walking along the beach, I have seen the fruit and decayed vegetables and things of that kind, that are on the beach. Several times I have gone down to the beach with friends from Sea Girt, with their bathing suits on, that they had put on at camp, and have gone back because the water was

not apparently suitable for their bathing. I stopped bathing about 10 or 12 years ago, on account of finding the water not as clean as I would like to have it.

The effect of this pollution upon those beaches during the summer season was very detrimental. It would be as I said a few minutes ago—if I came down here for bathing, perhaps I would probably want to go somewhere else if I could, where they do not have the garbage. I cannot say I have ever identified any articles on the beach that had anything on them to indicate where they came from—names or addresses. During the past six or eight years, I have been [1176] identified, either directly or indirectly, with the attempts of Governor Silzer, or ex-Governor Moore, or Governor Larson, to bring about the cleaning up of these beaches. I have heard a great deal of conversation in that respect. I am very familiar with the Governor's having received a great deal of mail in reference to the pollution of the beaches and asking the Governors to intercede and see if it could not be stopped. That has been brought very closely to my attention through the terms of Governor Silzer, Governor Moore, and now with Governor Larson. That is a period of 7 years.

C. E. F. HETRICK. [1177] On *direct examination.* I have been the Mayor of Asbury Park since the first of January, 1915. The resident population of Asbury Park the last census was 1,500. Approximated now, between 18,000 and 20,000. The summer population or, at least, the summer visitors in addition to the regular population has been estimated at from 200,000 people. The ratables of Asbury Park are between $36,000,000 and $37,000,000 [1178] assessed. The estimated value of summer hotels and boarding houses—I would have to give it only as an estimate—would run probably $30,000,000. That is market value, not assessed. On those facilities that have been provided at the public expense, for the

making up or preservation of our beaches, such as boardwalks, jetties, piers, bathing pavilions, casinos, convention halls, and so on, [1179] approximately $7,000,000 has been spent.

The length of our beach front is slightly less, I think, than a mile, by a few hundredths. Personally, I believe that the beach is the entire industry of Asbury Park. We have no industrial plants. For many years we have provided a city appropriation for direct advertising, which includes newspapers, magazines, and all the adjuncts of advertising. In addition to that, we provide a band; in addition to that, an orchestra. We have a baby parade, and functions of the type of a carnival. It has all come under the advertising funds of the city, and the approximate amount in the last four or five years is probably $600,000. This year our direct advertising fund has been doubled, which is in addition to other expenditures that will take place. [1180] We have not included a radio station in our program. We function over a radio station, for which we pay to the radio company owning it a certain amount. We have here a radio station privately owned. We are reaching out throughout the country. We are reaching out all over, through the medium of newspapers, through the medium of cards, through the medium of all kinds of advertising matter, inviting and seeking not alone the tourists, but organizations and the type of conventions. For instance, we are building a convention hall here that is costing us over $2,000,000, simply to house conventions and provide an adequate place for them. We have just finished the Casino which, in itself, is a gathering place, [1181] but more particularly an exhibition place; say a mechanical convention comes here—and that has cost us over a million and a half.

For the convenience of people, we are building sun parlors of this type (indicating building in which hearings were held) all along the line, under a comprehensive

plan of development, that will require, before finished, probably two or three millions of dollars more.

And we are heating these places, through central heating plants, a central heating plant costing us $600,000. That heats the entire boardwalk, under our scheme of development, which will be finished in probably two or three years, and will make of the Asbury Park beach front, outside of its boardwalk, probably a fireproof aggregation of buildings, for the purpose of entertaining visitors, tourists and those seeking health and recreation.

The boardwalk is approximately slightly less than a mile. It is now—at points it is 40 feet wide; at points it is 50, at points 60 and at points 20. We are widening that boardwalk eastward by 20 feet, and will re-ornamental light that in the newest method. Part of our program is a boardwalk uniform- [1182] ly 60 feet wide through the whole length. The entire development of the mile has been comprehensively planned by a group of architects, known as the Estate Architects, headed by Warren and Whitmore, of New York, who are international architects. Some years ago we were constantly met by erosion by storms, and we first adopted the bulkhead plan 25 years ago. That would not withstand the sea. So that we entered into a program of jetties. The first three years the best so-called straight jetties are wood. We are now building jetties of stone, that we are bringing in in ton blocks. An ocular demonstration of that is to be seen out of the windows there (indicating ocean front). That has required between 50,000 and 60,000 tons of rock; but it has protected the foot of Deal Lake, and it has made a wonderful beach for the purpose of bathing and for the purpose of recreation. And we have, too, along this northerly shore, apparently to protect our coast, and by the use of these jetties, accumulate sand that makes bathing beaches for the people who desire to use them. Otherwise, we have an abrupt beach, and lose it from year to year.

For Plaintiff—C. E. F. Hetrick, direct.

[1183] The Third and Fourth avenue group of bath houses, as we term them, are now inadequate, and next year we are planning to rebuild those in a larger and more comprehensive way, for the better use of those desiring to bathe. And within the course of three years, it is planned to put at the foot of Deal Lake, with its great expanse of beach, probably, one of the finest bathing establishments in the world. I mean bathing establishment, not alone taking into consideration salt water bathing, but taking in pool, salt water bathing, and tub bathing, electric bathing, Russian baths, Casinos, and such things, and every detail that makes up a comprehensive, wonderful bathing establishment for the use of people desiring the accommodations. Our plan of development is quite a broad one. To the westward, we acquired property, 300 acres of land, and there we have placed what is known as a Municipal Golf and Country Club. We developed along the shores of all these lakes. At the present moment, we are developing, in a beautiful manner, or preparing to develop, Wesley Lake, which is the [1184] southerly boundary line of Asbury Park. Sunset Lake is practically completed, as a beautiful body of water, but we still have the parking, with its vista, to complete, from the convention hall and theatre, what we call a mall, of the type of the Mall in Washington—and that was the theory behind the Sunset Park development.

While Deal Lake has been developed, so far as the protection of Deal Lake is concerned, there are still things to be done, especially on the shore, where we will put this bathing establishment of which I have spoken, and which, in itself, will be a monumental building, you might say. In the summer we provide Pryor's Band. That costs us approximately $40,000 a year. There is no charge for the concerts; they are free. In the Casino, we have always provided an orchestra, running approximately in cost, between $25,000 and $30,-

000, and that has always been open for visitors, while people who have desired to use the dance floor have paid a charge for the dance floor. But the building itself was open for the benefit of visitors at all times.

In addition, we provide the carnivals, which cost between $25,000 and $30,000 a year. That covers a period of two or three weeks; in fact, it covers the whole summer, the various things connected with it of a social nature.

[1185] Mr. Minard. You were speaking about your conventions and exhibitions, etc. I will show you a series of pictures, with which I know you are familiar. But I will have them marked before we speak about them, so that we can identify them by numbers.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 229" to "Complainant's Exhibit No. 238," inclusive.)

Exhibits 229 to 238, inclusive, represent photographs taken from the County Agricultural Exhibit that was held in the Asbury Park Casino, as well as photographs of the floral show, which is held as an exhibit in the Asbury Park Casino each year. Both are very attractive exhibitions. That is one of the parts of the program of more or less public service our community renders to the agricultural sections of our county and state. In our program of development, however, I might say this: That our beach development, our park progress, our schools, and all that, also leads up to a secondary development, which is more or less of a private nature; but each year they took a part in promoting, that is, the hotel sections, which were asked in here (indicating on photograph) [1186] in the next five or ten years, probably $25,000,000 or $35,000,000 in apartment hotels. That is all planned and being brought to a culmination. So that the westerly line of Ocean avenue, and back of that, east, will be developed by the type of hotels of the Berkeley, Monterey, Kingsley Arms, and places of that

type. Here is Kingsley Arms (indicating), the Merrimac and Santanda, have all been opened within the last three years. And that is the type that will develop all through this section (indicating on photograph).

In addition to those exhibits, there are what are known as business men's shows, with exhibits in the Casino. There are automobile shows, electrical shows, showing home development and the use of electrical apparatus in the homes, and various exhibits of that type, and they are all of a national or of a local nature.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 239" to "Complainant's Exhibit No. 247," inclusive.)

Complainant's Exhibit 247 [1187] shows an aerial view of a section of Asbury Park, beginning on the Wesley Lake line, the southerly line, and looking northwardly—north. Exhibit 245 shows an aerial view of the Berkeley-Carteret, the Monterey, Asbury Park, Carlton and other small hotels, a portion of Atlantic Square and a portion of the beach, near the jetty where we were located, at the time, looking northeastwardly. Exhibit 239 shows the Casino of Asbury Park, the new Casino, just completed. That is the one I referred to as an exhibition hall, etc. [1188] Exhibits 246, 240, 241, 244, 243 and 242 show typically the use of our boardwalk and beach front by the public. They describe conditions that I am familiar with on our beach front. This (examining photograph) shows the little children playing in the sand.

[1189] Mr. Minard. Now, there are just a few more pictures that I want to offer, showing conditions in Asbury Park. I offer in evidence these photographs (indicating), as Exhibits Nos. 248 to 255, inclusive.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 248" to "Complainant's Exhibit No. 255," inclusive.)

Exhibit 248 shows a picture of the Queen and her court, the Queen of the Baby Parade. That is an annual

event. The Baby Parade represents between $25,000 and $30,000 a year in expense. It is called the "National Field Day of the American Babies." We have been having it for 47 years. Many thousands of people attend it. No. 249 shows [1190] one of the parades of one of the conventions that come here—probably the Elks, I do not know—yes, it is the Elks' Parade. Exhibit 250 is another picture of the same thing. Exhibit 251 is the new high school and the athletic grounds. Since that picture was taken there has been added a stadium. In the far distance is Deal Lake. $1,200,000, the high school cost, with this stadium and athletic ground, $1,200,000, approximately. Exhibit No. 252 is an aerial view showing a portion, the southerly half, you might say, of the southwesterly half, or southeasterly half, of Asbury Park. This body of water here (indicating), is Wesley Lake. [1191] This is the division between Ocean Grove and Asbury Park. Exhibit 253 is an aerial view of the easterly section of the city, commencing on the southerly line of Wesley Lake and looking northeasterly. It covers about one-third of the city. Exhibit No. 254 is an aerial view showing what I call Sunset Lake Mall, and Park, and now leading to the convention hall and theatre at this point (indicating) on the beach, which does not show. The Berkeley-Carteret and the Monterey are shown in this picture. Exhibit No. 255 [1192] is an old photograph, taken four or five years ago, beginning with the North End Hotel in Ocean Grove, and leading down along the shore line of Asbury Park. You see this (indicating) is the old Asbury Park Casino. This (indicating) is the old Asbury Park Arcade. This (indicating) has been replaced with a new Arcade and Casino. This (indicating) is being replaced now with a convention hall. That is the fourth building. This (indicating) represents the beach area.

There have been a great many complaints come [1193] into my office about the accumulation of garbage and trash

that floated in from the sea and are deposited upon our bathing beaches. We had not only written but verbal complaints, and in addition to that, we had editorial notices in papers and news notices, so much so that it led me to a realization, and the Board of Commissioners to a realization, that we must do something, if possible, to alleviate the evil. Otherwise we were fearful that it would affect the patronage of the city as a resort city and as a bathing center. I am personally familiar with this garbage on the beach.

I might illustrate the situation by an incident that happened:

A very prominent New York Supreme Court Judge, bathing on our beach, said to me personally, "I cannot stand it any longer. I cannot bathe there." He objected to the bathing condition and these conditions caused by the garbage and the trash. That was one incident that happened, in a personal sense, you [1194] might say, some years ago.

I have been engaged over a period of time in a campaign to get rid of this garbage. I have before me my files and correspondence, and so on. I have prepared a brief statement here. And if the Court would permit me, I would like to read it. It contains a summary of my files and record on the subject. I have the letters there and papers there referred to in this document.

[1195] The first of which I have a record is the action I took June 16, 1923. (Reading.) "I wrote a letter to the Mayor of New York complaining about the garbage which completely littered the Asbury Park bathing beaches consisting of trash dumped by New York City scows and asking that instructions be given to dump the garbage in such places as to prevent its accumulation on the shores of New Jersey.

"June 21, 1923, I received a letter from Frances W. Rokus, Assistant Secretary to the Mayor of New York acknowledging receipt of that letter and stating that it

had been referred to the Street Cleaning Commissioner —Alfred A. Taylor.

"June 22, 1923, I received a letter from Commissioner Taylor referring to my letter of June 16 to Mayor Hylan claiming that a mistake had been made about the litter and trash coming from New York and that the garbage on the New Jersey beaches came from the steamships.

"June 30, 1923, I received a letter from Congressman Geran enclosing a newspaper clipping from the Sunday Call of Newark describing garbage conditions on New Jersey beaches and a letter from H. B. Snyder of Avon stating that the coast had been hard hit that year by garbage.

"July 28, 1923, I received a letter from Governor Silzer making suggestions for the purpose of limiting the garbage [1196] conditions on the beaches.

"August 4, 1923, I sent a letter to Mayor Hylan of New York repeating certain parts of my letter to him of June 16 and referring to Commissioner Taylor's letter of June 22 and enclosing a copy of Governor Silzer's recommendations. I complained in that letter of the New York garbage dumping which resulted in garbage on our beaches.

"August 24, 1923, reply thereto stated that he had called this letter to the attention of the Mayor (Hylan) in the hope that he would do something to improve the condition.

"August 13, 1923, I received a letter from Governor Silzer suggesting a conference of municipalities on the New York and New Jersey shores for the purpose of making representations to the City of New York on the subject.

"August 15, 1923, I wrote to Governor Silzer advising him that a conference had been called of the National Coast Anti-Pollution League of Municipalities to be held in Asbury Park August 23.

For Plaintiff—C. E. F. Hetrick, direct.

"August 13, 1923, I received a letter from John S. Sinnot, Secretary to Mayor Hylan, acknowledging a letter of mine to the Mayor received in his absence, enclosing Governor Silzer's letter above referred to, claiming that they complied with the Supervisor of the Harbor in dumping scows and claiming that the Department of Street Cleaning complied with the regulations; expressing the desire of Mayor Hylan to conserve the [1197] health of the people of New Jersey as well as of New York, and his desire to avoid the pollution of New York City. That letter stated that there was then in the course of construction a large incinerator which it was hoped would facilitate the sanitary disposal of the city's waste and obviate the necessity of dumping it at sea.

"August 23, 1923, a newspaper clipping from the New York Evening World describing the presence on the Asbury Park beaches of test bottles issued in New York and also a clipping from the New York Sun of the same day describing the finding on the Asbury Park beach of a basket full of papers from the Surrogate's office from New York City.

"August 23, 1923, I attended a joint conference at Asbury Park of the National Coast Anti-Pollution of America and the State League of the Municipalities of New Jersey called by Hon. Charles P. Gillen, then Mayor of the City of Newark, to discuss the question of pollution of water and beaches of the New Jersey shore. Commissioner's Gillen's address is contained in the minutes of that meeting which I have. In an address before that meeting—page 4—he explained the conditions on our beaches.

"Governor Silzer also addressed that meeting—page 5—and called attention to a question which he thought was very pressing along the coast at that time, namely, the question of garbage, litter, trash and all sorts of offensive matter [1198] upon the shores. And that the people along the shores of Long Island be requested to join

in a meeting of protest against the dumping of garbage by New York City scows and the resulting pollution of the New Jersey beaches as well as those of Long Island.

"At that time Mr. Edward Hatch, Jr., Senator Copeland, and Murray Herlbut, then President of the Board of Aldermen of New York, had participated in a conference on this subject. Attention was called by the Governor to the fact that people were afraid to go bathing on account of the garbage and that a number of diseases had resulted there from mastoiditis and intestinal influenza.

"The Governor stated that recently on a very hot day he had found on one of the New Jersey beaches a dog putrifying in the sun, which he caused to be removed. The Governor stated that he had the New York City scows watched and found that a number of them did not go more than 5 miles to sea before dumping, etc.

"Other persons who spoke at that meeting were David Newberger of New York, President of the Anti-Pollution League, Congressman Geran, former Congressman Appleby, and numerous others who are listed in the index of the meetings which I have with me.

"Resolutions were also adopted requesting representation in the Senate and the Houses of the Legislature to enact laws [1199] for the elimination of pollution to public waters and creating a commission to carry it into effect and for the appointment of a committee to act in the matter.

"September 19, 1923, I attended a joint conference of the New York and New Jersey Committee of the National Coast Anti-Pollution League at the office of Senator W. H. Reynolds, Mayor of Long Beach, New York, at his office at New York City at which the City of New York was represented by Corporation Counsel George P. Nicholson and Commissioner A. A. Taylor of the Street Cleaning Department. Various municipalities and Chambers of Commerce of New York and New Jersey were

represented. I have the minutes of that meeting with me. At that meeting Corporation Counsel Nicholson pledged the full co-operation of the city officials in protecting the beaches along the ocean front in both New Jersey and Long Island. He stated that they dumped their garbage 18 miles out at sea under regulations of the United States Government and expressed the opinion that it would be impossible for it to reach New Jersey shores, and that he had not yet received evidence that the garbage reached the shores. He explained the supervision and stated that he was talking only generalities.

"Mr. Nicholson then stated that in less than five years the City of New York would have developed a system of disposing of its garbage by incineration so that none of it would be dumped at sea. Mr. Nicholson stated that if anything could be [1200] pointed out to the City of New York to show that its garbage reached the shore and caused pollution the Mayor of the City of New York would correct it; that the Mayor was just as much interested in the beaches of Long Island and New Jersey as the people who resided there. He stated that the dumping of garbage at sea was only a temporary arrangement and it was on this ground that the Government consented to the dumping at sea.

"September 24, 1923, I received a letter from Mrs. Joseph Buchure complaining about having contracted typhoid fever on the New Jersey beaches during that year and mentioning other like cases of similar origin." (Discussion of counsel as to hearsay.)

[1201] "August 23, 1925, I wrote to Governor Silzer enclosing photographs of garbage accumulations on the beach at Asbury Park.

"February 27, 1929, I sent a telegram to Governor Larson stating that for a few days previous large quantities of garbage had been washed up on the beach and asking that something be done to remedy the condition."

What I have just read was simply given as a general

[1202] resume. (Further discussion of counsel.) The condition of the beaches [1203] has not improved from the complaints that have come in to my office. I then, after this, delegated to the superintendent of the beach, Mr. Kretzner — by a letter I authorized him to watch the garbage accumulations and make a complete report upon them from time to time, taking photographs and setting down the incidents as they occurred. So that I have not followed it in a detailed way, but only in a general way. Mr. Kretzner is the person who has had personal charge of the matter, practically since that time—for the last four or five years.

On *cross examination.* Up until the present time we have disposed of our garbage on what we call to the westward a certain number of miles, in trash heaps, and upon various farms. At the present moment, we are engaged in building an incinerator plant that will take care of the garbage and trash. Up to the present time we dump our garbage on land [1204] to the westward. That land is not owned by the municipality. We rented it. Of course, garbage has been used mostly, I presume, for the feeding of hogs by the farmers, who acquired it. Our bureau of information or publicity have this record of replies from various sections of the country. We have a record of people who come here, as nearly as we can get that record. And we also have what we call a "keyed-up" reply to our advertisement that we insert in papers, and we try to keep a memorandum of that. Mrs. McConnell is here, and has charge of that department, the information bureau, and may be able to furnish you better statistics.

On *re-direct examination.* I have here the annual report made by the publicity bureau for 1929. The publicity bureau in itself—the public- [1205] ity bureau, of course, is for the dissemination of information relative to Asbury Park, and in there it has also a service de-

partment of information. (Examining papers.) That is the report for 1929. That contains the information which Mr. Crowe inquired about for that one year, probably. He asked, really, for the people—whether we had a complete record; those who came into the Bureau and registered. Of course, that is only a very small number, in comparison with the great number of people who come here. Our great population, our visiting population, comes from New York and the metropolitan zone of northern New Jersey.

I should say the great proportion came from New York. These garbage disposition [1206] fields that I referred to are two miles from the city line, about, from the westward city line, and the new incinerating plants will be located five miles from the city line, between four and five miles. (The document referred to was marked "Complainant's Identification No. 256.") (Referring to report of witness.)

DANIEL J. MAHER. On *direct examination.* I live in Long Branch. I have lived there for eight years. I am president and director of an amusement and [1207] bathing establishment on the beach at Long Branch. I have been in the bathing business for five years. I have been familiar with the beaches for eight years. At times the garbage is a very serious problem to us, especially to our bathing establishment, and necessitates our employing two and sometimes three men to prepare our beaches so that they will be presentable to the public when they get ready to bathe in the morning. We have our men start rather early and rake our beaches and dispose of the accumulation of garbage or debris, and we may wash up on the beaches. It has at different times caused us considerable annoyance. We have had numerous complaints from our bathers, and it has been found that our beach has been in such condition that they have used our pool to a greater extent, denying

themselves of the use of the beach. There is a lot of danger connected with the situation. We have had numerous accidents on our beach. Only last summer, I remember a very fine gentleman, why, by the [1208] way, is an attorney from Newark, who cuts his foot severly in the surf on a broken bottle. That necessitated seven stitches in his foot. And we have had similar accidents with children—different persons on the beach cutting their feet with the broken glass in the surf. It is hard to say to what extent bathing is interfered with by garbage but I do believe that the stuff is very detrimental to our business and to the growth of our community. We have no way of telling how many people stay off of our beach directly because of this matter, but we assume that when the average person goes down on the beach and sees this condition that is repulsive to them, they will refuse to patronize the beach or use it. I have identified articles on the beach by names and addresses at different times—milk containers; bottle tops, bearing addresses in New York City. I have on one or two occasions seen some crates, or parts of crates, on one special occasion, with Washington Market tags from New York City; evidently a fruit crate or vegetable crate of some kind. [1209] We represent an investment, that is to say, I am directly interested over a $1,000,000 investment in the City of Long Branch. That is money spent for those shore facilities by myself and the men I am associated with.

JOSEPH J. KIERNAN. On *direct examination.* I live in Long Branch. I have lived there for 25 years. I am now in the real estate business. I was formerly Superintendent of Beaches and Parks of the City of [1210] Long Branch for 12 years. I am familiar with the beach front at Long Branch. I have been familiar with that for 18 years. I have encountered the garbage on the beach in my official capacity, as well as

personally. For 12 years we removed—that condition would come in there and we had approximately two miles of beach to take care of. In other words, there was a mile and a half of boardwalk, and then we had a portion of North Long Branch to take care of. We had about 12 men working there, and when this garbage would come in there it would be necessary for us to start working early in the mornings and hire extra help, that our bathing beaches would be in fair condition for the people when they would come down. But most times it would be impossible for us to do that in one way, owing to the fact that the garbage that would come in there we could not burn and the wood that would come in, such as staves, broken barrels, egg boxes, pineapple boxes, orange boxes, melon boxes, and portions of old furniture—old mattresses, and [1211] different things like that, they would be saturated with water, and it would be necessary for us to pile it up in the sun, and then to use gasoline or kerosene to try to burn it up. The garbage we would have to remove, or dig holes in the middle of the beach and throw it into that, and then cover it up with sand. The garbage consisted of pieces—or old oranges, watermelon rinds, and lemons, rotten lemons, and apples and grapefruit; old chickens; sometimes dogs and cats and different things. I had personal charge of this beach removal for 12 years. That period ended in 1924. My office is directly opposite the boardwalk at the present time, and has been since 1924. The street is about 60 feet—about 100 feet wide, just about like across the street from the hotel here (indicating); not quite so far. That is where my business is conducted. [1212] There has been difficulty with the garbage on the beach since 1924. I think it is increasing. I am right in the Chelsea Bath Building. And naturally the bathing is in front of our office there. That is where the most of the bathing takes place. In the real estate business, it hurts us to this extent: When we look for

renewals of leases for the coming year, the people say, "I guess we will have to cut it out this year, Mr. Kiernan, because we did not have much luck last year, and we had a few little accidents, and things like that." We try to tell them it will be remedied, and they say, "That is the same thing you said last year, and the same thing happened last year." That thing occurs, you might say, one in every fifteen or twenty persons you would ask. It has occurred every year since I have been in business, anyhow. I have identified objects with names and ad- [1213] dresses in the garbage when we burned the stuff up. The only thing we could take would be pieces of boxes or staves, or something like that. Sometimes it would say Washington Market, Fulton Market, or different places like that. I was born in New York. I was born there and graduated from Henry Street School No. 2.

THOMAS A. HINES. On *direct examination.* [1214] I live in Long Branch. I have been in the plumbing business for 30 years. I also lobster fish and net fish. I did that approximately ten years; ten years off and on. I discontinued that just this last summer. I didn't do no fishing the last summer. I would fish about five or six summers, lobster fish, and then I was working, and when I had a steady job working, I didn't bother with it. I have been out where the garbage scows dump. I have seen them dump as many as 100 times. I have never identified the scows by any letter or number. But I know they were coming out of [1215] New York City, for the simple reason that they were all coming out of the harbor, that is, out of Sandy Hook. Whether these scows had initials on them I would not say. I would not say that part. They carried everything in general; everything in general—the heavy stuff. By "the heavy stuff," I mean the stuff that went to the bottom; that covered up their pots when they had their pots

in line when they were dumping it, and the light stuff floated on the surface, some of it floated below the surface and gradually worked in. Because they got their earliest loads all the time in the wood stuff. This garbage contained wood, quite a little of it. It included everything in general, as I figure it. I have seen sometimes logs coming out of there. I would not say out of the scows; out of the sea. I have never been right close to the scow to [1216] identify the number, or to say exactly what they dumped off. I have seen them dumping. We have seen the garbage floating in the sea. It is everything in general, as far as I can see. It is orange crates, lemon crates, old bananas, or oranges, pineapples, and everything in general of that type. Some of the vegetable matter has been mixed with wooden boxes and crates such as I describe. I have seen as high as at least two miles or three miles of it. I have seen it between the dumping place and the shore. I have followed it the entire distance between the dumping place and the shore. I have made trips when I have [1217] seen garbage and wood and stuff of that type. All the way in. I have seen it on the beaches. This material that sinks covers our pots up altogether. You cannot get that up, the concrete and such as that. The concrete and stuff like that is all in the same barges.

On *cross examination.* I have never been close enough to the scows to identify the material.

J. WILLIAM PROCTOR. [1218] On *direct examination.* I live in Long Branch. My business is bulkheads, jetties, ocean front protection. We also build and install filters for swimming pools. I have been engaged in that business for 30 years. Mostly it keeps me on the waterfront. I go out to sea very rarely. I have never seen them dump, but I have seen the garbage after they have dumped, out in the vicinity of the dumping

grounds. It is a solid mass that floats, of banana stalks, barrels, boxes, grapefruit peeling, orange peeling, etc., and so on—wood. I saw vegetable [1219] and animal matter mixed in with the wood. I have seen practically the same ingredients come on the shore that I saw after it was dumped offshore. But I have never followed it to the shore. My trips out there have always been pleasure trips. I have never followed in an identical portion or quantity of the garbage. Being in the filter business—we install a great many filters in the spring of the year and remove them in the fall. We install filters because, when the wind is east, the water that we pump out of the ocean into the swimming pool was not fit for [1220] people to go into. It was cloudy and dark and full of vegetable matter, etc., and so on, and we found it necessary specifically to filter that water in order to get people to bathe in it. The conditions are fair and when the wind is west we do not have that, but when the wind is east and continues east, we get this vegetable matter and garbage. It is only the easterly or northeasterly winds coming from that direction that bring in the garbage. I am not familiar with the ocean lanes of vessels going out of and coming into New York Harbor. The garbage causes the sand to smell bad, so that women do not care to sit on it. It obstructs the use of the beaches during such periods. Very often I have difficulty with it in my own contracting work. In contracting, we pump a great deal of [1221] the water from the ocean to the jetty, and piling, etc., and so on. We have had, at different times, to often put strainers on these filters, because we could not pump out of the surf when the wind is east; it stops us when we have dead cats and dogs get into the pump. This material in the water we find in our pumps. I have identified objects with names and addresses on them, but I have no record of them. They came mostly from New York—New York addresses on them. This pollution

of the beaches has a tendency to drive the people away. It does not make the beaches desirable. It smells bad when the sun comes out on it, and has a tendency to drive the people away from it.

On *cross examination.* Those names and addresses were names of business concerns and distributors and manufacturers in New York City, [1222] trade names. I made no record of it. I never knew that this was coming on. In other words, there would be cans and the like. We try to extend our suction line out as far as we can; that is, into deep water. Oftentimes there is a bar on the way out—I mean by that 150 feet from the undertow, and then, as a rule, there is a slough that causes better water between the bar and the undertow, and we try to get in the best water, so that we can work on low tide; that is out object. We go out I should say, on the average 50 feet or 60 feet from the undertow. We try to get in between the bar and the beach. That would be approximately 150 feet from the shore line, from the high water mark. In order to get the pressure, we have to use a duplex piston compact pattern, which has valves in it; and [1223] anything that you might pump up into it, even as small as my finger, would lodge in the valve, and of course that would break the pressure; and the first valves that you break in the pump, it would break the suction, and then that passes that valve and strikes in the upper valve, and it breaks the pressure. We pump only during the day. The state of the tide depends upon the work. If we were working on the jetties, it would be usually low tide.

J. WESLEY SEAMAN. On *direct examination.* I live in Long Branch. [1224] I am a Civil Engineer. I have been connected with the Government of Long Branch as city engineer. That was for a period of 17 or 18 years, about. I had the construction of the bulkheads and the

beach protection facilities along the Long Branch coast or shore. I have been familiar with the garbage conditions along the beach in a general way. I have observed the garbage on the water from the undertow out a distance of 100 yards, I suppose, and up on the beach, as the tide came in it would throw the garbage up on the beach, up on the sand. It prohibits people from bathing. They do not desire to go in bathing with that condition. [1225] It interferes during the summer season with the use of your beaches to a large extent, especially where the wind is northeast, it brings the garbage in and people will not go in the water.

I have identified articles on the beach with names or addresses on them a few in times past. The names and addresses were New York—barrel staves and things like that—crates. I do not know what affect this recurrence of garbage upon our beach has upon our community, the beach development and growth. Of course, we do not have the visitors there that we should have. People go to other places. We rely upon our beach front as the attraction for our city to a large extent, it is a summer resort, and right along the ocean, of course.

[1226] EDWARD PHILLIPS. On *direct examination.* I live in Long Branch. My business is fishing, lobster fishing. I have been about 30 years in the lobster business, and before that bluefishing. I have been out where the garbage scows dump. I have seen identification marks on the scows. I saw them, but did not put them down. Of course, I would not swear to what they were. [1227] I know they come from New York with garbage. They contain chickens and dogs, and especially orange peeling and banana peeling and lemons, all kinds of fruit—see? I have saw lambs, and I was going to say a quarter of beef, but not quite as heavy as that. There is all kinds of crates. Orange crates and different kinds, even chickens in crates. I have seen the scows dumping. I have not

seen them—probably during the 20 years I was lobstering, probably 10 or 15 times. They blow the whistle, and they give the signal, and the man comes out, of course, with about a ten pound sledge hammer. Of course, I could not tell what was on the scow, only above the deck, and it does not have much deck. He would take a sledge hammer and knock the gate in, and the scow would go probably 8 or 10 feet. And we would [**1228**] have probably eight or ten foot of paper; no wood, no logs on the deck came out. And what was below I could not tell. And that day they were so close that, if I had not taken away, they would have run me down. And I saw that with my one eye. And after they dumped they took my lobster pots away, some of the lobster pots. We were right on the road, probably 100 yards from them. It was very foggy that day. And the Captain said, "Boys, we are going to hit you." Well, he did hit us. And I said, "Drop your buoy. Be a man." After he dumped the garbage—the current came, and a very strong current ran. and they run right into Long Branch, these currents, they are very strong. And that day, after they dumped the garbage ahead of us, we could not run our power or move our wheel, because of that garbage. After that we come to Long Branch. Our difficulty that we could not run was, it was very thick, and the mass of stuff in the water was such that we could not run through it. When we came to Long Branch—of course, this east wind had been blowing for two or three days, blowing right [**1229**] down. And were piled up on the beach with the garbage, and we got off this day, probably the first day in eight or ten days. We were anxious to get out and see our lobster pots. And of course, the garbage was there, and we had to move the garbage in order to get our boat down on the beach; we had to move dogs and chickens and things like that. And then this stuff came, and the next morning we had to move garbage again which had come in with this northeast wind. Between the garbage dumps

out there and the shore I have seen the garbage that is strewn in the sea I should judge, around five or six miles, out from our beach. I came upon the garbage about five or six miles out, which they had dumped that day. Of course, that is owing to which way the wind blows. If the wind is from the west, we will not see that for [1230] a day or two, but if the wind is northeast, we get all of that on the Jersey beach, every bit of it. The wind carries it away, and then a shift of wind carries it back. All that floats is there waiting for a proper wind. Whenever the wind is east or northeast we will get it. We are bound to get it sooner or later. And that day I would not take $100 for the property I had in the lobster pots when these two scows dumped on my gear. The effect upon our fishing when they dumped in the neighborhood of our pots. I could not say. When those pots are gone, they are gone forever. Because of this an immense load of garbage to go down there—hundreds of tons.

I never had this experience but twice, and one time—this is the time I mention now. The other time, the captain would have run on me, and then they stopped their playing cards and happened to find me, and I lifted my gear— [1231] I am talking about two cases. I could not mention any other time except those two. I have seen it from a long distance. They always give "toots." You can hear that further than you can see the scows. This material that I found on the shore was mostly the same kind of material as that that I saw dumped out into the sea.

I have been able to identify objects in the garbage of a peculiar appearance that I have seen floating at different times or places on the sea. One day, we lifted the lobster pots and two scows came out of New York, and they dumped two loads probably a mile and a half or two miles from us. You could see them with your eye, and you could hear the toots. And we went on; we had a lobster gear out there, probably a mile, [1232]

maybe 100 yards, I don't know, from where they dumped; and on the way out there was a mass of pineapples, I should judge the neighborhood of two tons of pineapples that they dumped. I could not swear they dumped it, but it was right where she lay, and I could see them—or you could see the pineapples where they had been dumped, and bananas, and some which were spoiled, which were pineapples. And I picked up about a two-bushel basket full of pineapples, probably in an hour, working in the garbage, picking up these pineapples. They were just as good as ever; we knew they had not been in the water long enough to affect them, and I took them ashore and utilized them. They was from the garbage scow. And we had piles that we could ride on—paper and things like that, before the tide and wind started them around; they were there for five hours when the tide would carry them away. I could not say I have seen particular articles floating in the garbage dumped at sea that I was able to recognize at any other time when I was going in or out, like a particularly shaped box, or cans, or articles with individual marks on them, because I never noticed the marking or anything of the kind, the names on none of them. [1233] I may have noticed it at the time. If that garbage is dumped 25 miles today, it would go, maybe, to Barnegat Bay, or down that way, if the wind was northeast. [1234] If it was dumped 20 miles, and the wind was northeast when it was dumped, in 12 hours that garbage is on the Jersey beach, probably Long Branch, probably Asbury Park; you can't tell. (Motion to strike as a conclusion. Granted.) I am familiar with the action of the wind on the surface of the water. It is part of my business to know that. If we start to go to lobster fish and the wind is a little bit rough we know we can't get there. [1235] (Discussion of counsel.)

For Plaintiff—Edward Phillips, cross.

On *cross examination.* Our lobster pots are located probably off Long Branch today, and probably tomorrow we will change them and go five miles northeast. If we do not find the lobsters there, we will go another mile and a half eastward. You see, [**1236**] we do not have any one place; they are all over. Some are off Long Branch, some are off Asbury Park. We fish about 135 to 150. How far from shore our lobster pots are we never measured exactly; but our motor, we know, runs probably 12 or 13 miles; 13 miles is about the most. Our lobster pots would extend from a point about five miles off the shore to a point twelve miles off the shore; somewhere in the neighborhood of 11 or 12 miles, as near as I can tell. Then again, starting in the spring, we are, maybe, a quarter of a mile, a mile and a half, or two miles, or something like that; of course, we have to look for the lobsters. Our lobster pots would be located in the vicinity of Long Branch most of the time. We would have lobster pots oftentimes off Asbury Park. [**1237**] but most of the time off Long Branch, and probably three or four miles to the north or south or in that vicinity. I cannot tell you the lettering or numbering on any of these scows that I saw dumping at sea. I never remember them, if I ever saw them; but the last three or four years we mostly fish down this way in the southeast, but before that we fished out around the dump. That was, maybe, seven or eight years ago. The dumping grounds run from five miles off the beach to 25; that is owing to the weather—whichever way the captain thinks of. If the weather is very severe, in a heavy sea, he is liable to dump within three miles of the beach; that is up to him. The captain certainly controls it, because I have seen them dump, as I say, five or six miles from the beach; I had them dump onto me and saw it. When they were digging the subway, some of the scows would dump earth of all descriptions, and stone. [**1238**] But, of course, I could not call that

garbage, I only saw them dump garbage within five miles when they took this rigging, the lobster pots and the buoy. That was five or six miles off, by the inshore lightship—right south of it. That was four or five years ago; something like that. I have not any way of fixing that date definitely, you had so many different men that I could not tell. The way I put that distance is the inshore lightship there, [1239] the inshore lightship, which is supposed to be six miles from the beach. And I was directly south of him when he dumped on me. That is the subway dumping that I am talking about. When I refer to the dumping scows that had letters on them out at sea, I was around about two miles away when I heard the whistle. I saw the scows dumping a sheep. I suppose the sheep must have been spoiled, and they throwed it on the scow in the garbage. I did not see the scows drop the sheep into the ocean. I saw it, but it was not close; about two miles. [1240] When I went to the lobster pots, it was there with the rest of the wreckage—garbage. My lobster pots lay on the bottom. Sometimes we sink in fifteen fathoms or sixteen, dependent on how far in— I found the sheep on our buoy, by the lobster pots, with the rest of the garbage. I have told all I know about the dumping off shore.

CHARLES WARNER PHILLIPS. [1241] On *direct examination.* I live in West Long Branch. I have been a fisherman for about 14 years at Long Branch. I do lobster fishing, net fishing, bottom fishing. I have been out where the garbage scows dump. I have not seen them dump very often. We operated there one summer, my father and myself, as he was just telling you, and it got so bad we said, "We will cut it out and will not fish there any more." We have lost so much gear it didn't pay. I think there was a number on the scows. That has been quite a while ago, but I think that is

the way they were numbered. [1242] I have been near there when they dumped, as father told you. I have seen all kinds of rubbish and garbage, boxes, crates and dead animals and orange peels, lemon peels and all kinds of garbage—wood.

There were crates and wooden material among them, boxes and parts and chips. The heavy stuff would sink. This particular day when we lost the pots—we got some of them back—these scows dumped on top of the gear and took the buoy off; and, of course, the light stuff, when it came up, looked like a floating island; after they dumped it, it looked like a floating island. I imagine it covered about a quarter of a mile, something like that, after it spreads out from under the scows. After that it drifts away; whichever way the tide is, or the [1243] wind, it breaks up and drifts. The direction in which it moves depends entirely on the tide or wind. I have seen that material move away. It keeps breaking up, as the tide keeps breaking it off. I have seen similar material on the New Jersey beach. I have seen it between the dumping grounds and the beach. Sometimes you would have to run around it; you could not run through it; you would have to run around it; you would have to shut the power off, for fear the wheel would hit it and take the wheel off. I have started to the dumping ground and met it going [1244] out and coming in both, at times, in bunches. In going out I have met it from a mile on out. And in the undertow, for that matter; when we got the boat down and got to the float, we met it. I have observed it out toward the dumping ground all the way, as far as they went. I think this garbage interferes with our fishing. Especially when you are fishing up on the dump where those scows dump, you lose an awful lot of gear. This instance father was telling you about, when they dumped that on the gear, we had part of a wheelbarrow and bedsprings and a whole lot of junk, and we could not get it out; and

we got seven pots out of the gear, and there was 22 pots in the water. We lost the rest. This garbage interferes with the navigation of our boat. You cannot run across it; you have to shut [1245] down the power, or run around it; they would pull your propeller off. There are times when we get off in the morning, if the wind happens to be east, or the current, the garbage is there, and we have to clear it away before we can get the boat off the beach. We use planks and rollers to get it off the beach, and we have to clear that away to use the planks and rollers. I have identified articles in the garbage that had names and addresses in a way. I have picked it up on the beach. New York City was given as the address. About three weeks ago I picked up a bundle of papers from the New York Edison Company—bills, a big stack from the New York Edison Company, in New York City.

On *cross examination.* I am still engaged in lobster fishing in the summertime. I go out to my pots [1246] every day. I generally leave at daylight in the morning. I get back at twelve or one o'clock in the day. The longest period that I would be out would be five or six hours.

EDWARD J. COUGHLAN. On *direct examination.* I live at Long Branch, New Jersey. I have a typewritten record of the minutes of a conference of the National Coast Anti-Pollution League of America, and the State League of Municipalities of New Jersey, at the New Monterey Hotel in Asbury Park, August 23, 1923. I took the proceedings of that conference, and this [1247] is my stenographic report thereof. I have another typewritten report, Minutes of a Conference of the New York and New Jersey Committees of the National Coast Anti-Pollution League of America, at the Long Beach Building, in New York City, September 19, 1923. I took the stenographic report of that conference. These are the

minutes prepared by me. (Discussion of counsel.) [1248] On page 1 of this report of the conference of September 19, 1923, there are the names of individuals who were present. And the index in the report of the meeting of August 23, 1923, shows who were present at that meeting. [1249] (The documents referred to were received in evidence, and the report of September 19, 1923, was marked "Complainant's Exhibit No. 257," and that of August 23, 1923, was marked "Complainant's Exhibit No. 258.") [1250] (Lengthy discussion as to probative force of the last.)

J. SHUBERT BARTON. On *direct examination.* I live at 1211 Second avenue, Asbury Park. (Witness shown a brown paper bag.) I put some of the papers in this bag at my home one time, and delivered them to the city offices. That looks to me like the bag I delivered them in. That is not my notation on there. That is written by someone else. [1251] I found those papers on the Belmar beach. I think it was two weeks last Sunday afternoon. They were in bundles when I found them. One was that high (indicating) and that wide (indicating). The bundles were 30 inches high, either two or three of the pamphlets wide. The bundle contained these things exclusively. I left the bundle there where it was. [1252] I opened it and took these out. The rest of them were like these as far as I know. I just took some off the top; as far as I know, they were.

These documents are little yellow-covered pamphlet booklets. There are fifteen of them here. On the front of them it shows Hunter's College of the City of New York. Examination Book. Name—Henrietta Rosenberg. Date—June 3, 1929. Subject—Logic 715-A. Instructor's Name—Mrs. Julia Sutherland.

"Hunter College of the City of New York. Examination Book," is the same on all of them, and also the

other data, excepting names and dates; in other words, they are all alike, as far as the college named is concerned. [1253] I do not see any difference in them, no. These books contain, each of them, a multigraphed page containing examination questions, and in the pages that are bound in the book, there is in writing what appear to be answers to the examination questions. (The documents referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 259-A" and "Complainant's Exhibit No. 259-B.")

[1254] Mr. Minard. Are you prepared to stipulate where Hunter College is located?

Mr. Crowe. Yes, in the City of New York. It is part of the public school system of higher education in the City of New York. It is a public institution for girls in the City of New York—or college.

On *cross examination.* I found these on the Belmar beach. I think it was two weeks last Sunday. I am quite certain it was two weeks ago last Sunday afternoon. Last Sunday would be the 19th, and that would be January 5. When I picked them up, they were on the beach. [1255] They were about 100 feet from the Inlet, Shark River Inlet, and they were about 50 feet back from the high water mark, where the other stuff lay; these laid with it. I left them in the city office, the commissioners' office. I left them for the Mayor. The Mayor was not present, and I left them at the office. That was last Tuesday morning. Between January 5 and January 14 they were in your custody. I had no idea they would ever be of any use to me. I just picked them up. I gave a thought to the milk bottles. Belmar beach is not a part of Asbury Park. [1256] I live in Asbury Park. I found them there driving. I stopped on the beach. I have not made any inquiries to find out the names of these people. I thought they would be useless. They have been thrown away. They

were no good to anyone. I do not know how they got on the beach. When I picked them up, they were in this condition as they now appear. They were about 30 inches high, and they were just packed right together and tied together all in one big bundle there.

On *re-direct examination.* There was a little of everything on the beach at that time. [1257] There was wood and bottles and trash and fruit. I found this package in among the rest of these materials. It was wet when I found it. The whole bundle was wet.

On *re-cross examination.* It was about 50 feet back of the high water mark; it had been with the rest of the stuff; this laid right in with the rest. There had been a high tide, and this was above the high water mark, where the waves had thrown it. They were practically all together. There was some stretch there. [1258] They were there together, they were all on the beach at the same time.

On *re-re-direct examination.* With respect to the other garbage and refuse that I saw on the beach, this package of papers was in it. The formation of this garbage on the beach, I should judge, was ten feet; I would say when it left it there it was ten feet wide. It was on the edge of the high water line where the high tide had left it.

On *re-re-cross examination.* These papers were near the westerly end of the beach on the high water mark; where the waves had left it on the high water. With reference to the westerly beach line, [1259] there is a street along there, Ocean avenue. With reference to the easterly line of Ocean avenue the eastern line of Ocean avenue, on the high water mark, is 200 feet there. They have a 200-foot beach. I picked up these papers, I would say, roughly, 200 feet from the easterly line of Ocean avenue, and high water mark is 200 feet; that is

about 200 feet. The beach commences practically at Ocean avenue. As soon as you leave Ocean avenue on the beach, the boardwalk is the beach; the boardwalk is practically over the beach. There is not any space between Ocean avenue and the boardwalk. There is a bulkhead divides the highway and the boardwalk; between Ocean avenue and the boardwalk is a bulkhead. [1260] As I say, about 200 feet is high water mark, from the boardwalk. It is 200 feet to high water mark from the boardwalk. The westerly side of the boardwalk is the easterly side of Ocean avenue. The high water mark of the beach is 200 feet further east of the boardwalk. The boardwalk is about 16 feet wide. The bulkhead is on the west side of the walk. The bulkhead divides Ocean avenue and the boardwalk. [1261] The boardwalk is 16 feet wide, and then the bulkhead begins.

HARRY PETERSON. On *direct examination.* I live in Seabright. My business is fishing, and I run a yacht in the summertime. I have been in the fishing business since I was born. I have been running a yacht in the summertime for five years. [1262] I run the yacht of W. Warren Barbour, President of the Linen Thread Company. I never saw scows dumping. I have seen the garbage at sea after it has been dumped, right alongside of the dumping grounds. Sometimes they would dump six miles, and sometimes they would dump ten miles, according to the weather. That is according if it is foggy, if they can get away—they will dump it in the channel, if they can get away with it. The place where it is dumped is determined by weather conditions; that is my observation. How soon after they have dumped I have seen the garbage I never taken the time of. [1263] You do not have to be near to hear the signals; you can hear the dumping signals from the shore. I have been near enough to see the scows themselves. I have altered my course to go around them in sailing

the yacht. I have met them in the channel. I have met them offshore. The formation of the garbage is banana peels, orange peels, dead dogs, cats, rats—most any things. You see things I would not want to mention—they give us more trouble in fishing than anything else. [1264] It distributes if there is a sea. If there is a sea, we get it all around there. I have identified the same mass of material on the shore plenty of times. I have seen the garbage from the undertow, clear out to the five-mile limit. We had to stop our motors to go through it; we would break our propeller, or our shaft, if we went through it, and we would go out of our way and change our course to get out of it. That is a distance of five miles at sea. I have never followed any drifts of it coming in. I have always tried to hold my course and come ashore. I have not bothered about following it. This garbage interferes with my fishing plenty of times. In mackerel fishing in the spring of the year, we will have nets that will reach four or five miles. [1265] The pollution goes into it, and we have to stop and pick up sticks and other things in order to avoid any more trouble, and it tears our nets. There was one time it sunk, and we were only six miles at sea, and we had to lose two nets, and we picked up, I judge, a ton of tin cans, hammer handles and anything—oh, dusters and everything like that. The effect that it has upon the navigation of the yacht is that it loses time. We have to slow up to sail through it. You have to pull out— That is, in the navigation of a pleasure yacht in the summertime. I have no navigator's license. I am born in this country. I can run anything up to 75 foot. You know the law. It affects the landing of our boats on the shore, or our embarkation on fishing trips. [1266] You take a plank or two running over all of those pollutions and logs, and everything; and you lose a lot of time. If you have no engagement, time is not worth nothing. But we have to go out there, and we have

to make a living out of it. The only thing I saw is New York addresses that could be thrown onto the beach at any time, to drift right in. I have not followed the garbage at different places from these islands that I have seen out at the dumping grounds to shore. I try to go through them and get home the best way I can. You know the course of that channel. They are dumping right here off Jersey, and the channel at Ambrose Light is east by northeast, and that is right off Seabright. What does Long Island get? The only wind that will hurt her is northeast. It will all come this way, no difference which way the wind is. Long Island Sound runs east and west.

[1267] On *cross examination.* We can hear the whistle at Seabright in a fog, and pretty close in. I do not know what scow is dumping at the time I hear the whistle. Who blows the whistle is up to the skipper of the tug boat. I have heard the whistle more often than I have seen the dumping. I cannot tell whether it is private scows dumping at sea, under the permit of the Navy Department, or New York City scows. [1268] (Discussion of counsel in re substitution of exhibits.)

Mr. Minard. Then we will offer the small copy of [1269] Identification No. 115, as an exhibit. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 115.")

Mr. Minard. We offer the small copy of Identification No. 116, as Exhibit No. 116. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 116.")

Mr. Minard. In the same way, we offer the smaller copy of Identification No. 117. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 117.")

Mr. Minard. We offer the smaller copy of Identification No. 118. (The photograph referred to was received

in evidence and marked "Complainant's Exhibit No. 118.")

Mr. Minard. Here are two additional photographs taken by Mr. Stickler that we will offer in evidence, and we will prove them by Mr. Stickler, who has already been sworn; he was a witness here before. (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 260" and "Complainant's Exhibit No. 261.")

HERMAN STICKLER. [1270] On *direct examination.* I took Exhibits 115, 116, 117 and 118, and also Exhibits 260 and 261. I took them on the dates marked on the face of each one, December 13, 1929. I took them at the places marked on the face of the picture, namely, Seaside Heights. They show garbage and debris on the beach at Seaside Heights at that time. Identification Nos. 115 to 118, inclusive, are enlargements of the same pictures.

On *cross examination.*

Q. Looking at Complainant's Exhibits Nos. 117 and 118, [1271] I call your attention to this object here (indicating) appearing in both pictures, and ask you whether or not that is a tile conduit or pipe?

A. (Examining photographs). That I could not say. I cannot distinguish whether that is a pipe or not. It may be a box. I cannot tell what the material is.

Plaintiff's Exhibits 117 and 118 represent substantially the same part of the beach surface and the same objects. (Discussion of counsel.)

[1272] JAMES STROLLO. On *direct examination.* I live in Long Branch, New Jersey. I am a civil engineer I was a city engineer of Long Branch from 1924 to 1928. I am not now city engineer of Long Branch. I have been practicing the engineering [1273] profession at Long

Branch for nine years. I have had to do with the maintenance and development of the beach front from 1924 to 1928 for the City of Long Branch. I have been familiar with the beach at Long Branch at other times. I am engineer now for Allenhurst and Deal. I was for Seabright, Monmouth Beach, and West Long Beach. I have been engineer for beach front municipalities for nine years. I have in that time encountered the garbage on the beach. It does not interfere with my work. My duties have never included questions of the garbage. [1274] I have had personal observation of the garbage. When the people saw the garbage they would move away. It would drive them away from the beach. They would not stay there. I have seen the garbage on the beach. The beach was strewn with it. I know it has interfered with the use of the beach during the summer months when the garbage comes on the beach. It interferes with the use of the beach until it is cleaned off. [1275] I have not examined the garbage to find any names or address in it.

JAMES DURKIN. On *direct examination.* I live in Northwest Asbury Park.

Q. I show you a card, and ask you if you ever saw that card before (handing card to witness)?

A. (Examining card). Yes. I found it on the beach in a bottle, about two blocks below the last jetty in Asbury. When I found that card, it had an address on [1276] the front, to which it should be mailed. I see it there (indicating). It had a date at the top of it, this rubber stamp date.

I did not put that rubber stamp date on there. I put on that card James Durkin and the address. I put the date on the top. I thought someone was throwing it in the ocean to find out how far it would go to sea. I put the date on here (indicating). The date is June 4, 1929, I believe. I took it and mailed it to Mr. Smack, the person to whom it is addressed. That card was in a bottle,

[1277] corked up. There were other things on the beach when I found that bottle, electric light bulbs, bottles, lumber of all descriptions was there — pieces here and there. There were some big dead dogs and cats that lay on the beach. There was garbage amongst all of it. They come in right after a northeast storm. (Offer of card in evidence. Discussion.)

[1278] On *cross-examination.* I mentioned a date, June 4th. That is the date I mailed that in to him. Whatever it says there—I do not know what it is.

Q. The mailing stamp is June 12th?

A. June 12th?

Q. Yes, June 12th.

A. Whatever it says on there was the date I picked it up and— .

I live in Northwest Asbury Park. I have lived there several years. Asbury Park and Neptune, New Jersey is practically the same thing. We call it Northwest Asbury Park, we who live there, you see.

(The card referred to was received in evidence and marked "Complainant's Exhibit No. 262.")

[1279] Mr. Minard. Let us see if I can make out that date. It was put in and filed with some carbon, which has some smudge on it. Let the card remain in the sunshine, so that the pencil marks will shine, and you will see it is June 7th—the date written on it.

I am working for Fred Deegles, the real estate man—the handy man, I am. In June, 1929, I was building this place on Fifth and Ocean avenue, that playground there. I was employed by Dr. Daniel Crucious. He lived at that time at 512 Grassmer avenue. That was for the public—well, it was for him that I built it. It was for the public—for a playground; a free admission playground, operated by the doctor himself. When I saw it, this bottle was, [1280] I should say, about two blocks below the jetty. The jetty is located on this side of the outlet of Deal

Lake. It is on the north side of the jetty. It was on the beach. I should say it was about the size of a catsup bottle; a clear bottle, it was. The height was about the size of a catsup bottle, too, I believe. It was higher than eight inches I think. I could not exactly tell the height of the bottle now. The bottle was corked. It had a cork shut tightly into the neck of it. It did not have a metallic cap on top of that. [1281] The width was about the size of a catsup bottle, is as near as I can say it. I have no idea the width. I should say about three inches, two and a half or three inches; somewhere around there. I should say it was about that long (indicating). (Discussion as to length of bottle.)

[1282] Mr. Crowe. It is stipulated that the size of the bottle as indicated by the witness is ten inches in height.

H. S. WARD. On *direct examination.* I live at Point Pleasant Beach, New Jersey. I have been a realtor for about eight years. Point Pleasant Beach is a summer community. Its attractions consist mostly of its summer resi- [1283] dents. We have no other source of income except the summer residents. The attractions we have for the summer residents are bathing, fishing, water sports. All the attractions are confined to the water. I live on Ocean avenue, which is just west of the boardwalk. The distance of our community along the Atlantic Ocean is about, approximately, a mile and a half in length. I naturally interview a great many summer residents as to rentals and as to sales. I am familiar with the garbage conditions on the beach. In a general way, there has been fruit, vegetables, animals, old household furniture, mattresses, crates, and rubbish of a general description. I have never identified any names and addresses on it. [1284] It comes on the beach in its worst form in a northeast storm, practically littering the beach to the extent that those who have cottages there, as well as the people who rent cottages, agreed to put up certain amounts of

money to have that particular section of the beach cleaned, and when I say that particular section, I am referring to the southern section, in which I live, because I know the conditions there; we ourselves contributing toward the keeping of the beach clean, because we use the beach, as well as the people living directly on the beach. That part of the beach, then, is cleaned at the expense of the private residents and property owners in that immediate vicinity. The expenditure for that purpose approximates about $10 to $12 a week, because they are not kept at it constantly all day long, unless under extreme circumstances, and under extreme circumstances it might run into more money, but I am speaking of the general average of expense. This garbage interferes with the use of the beach to the extent that parents will not permit their "kiddies"— [1285] they themselves will not go in bathing, and residents who come there on a summer vacation are very much put out, especially the men folks, when they come down over the week-ends, at the fact that they cannot go in and enjoy their baths, which they particularly rely upon, our place not being a place containing a great many amusements. This garbage has affected the beach front, particularly this summer, so much so that a party by the name of Trimball, from Elizabeth, who has been coming there for the last three seasons, one of my clients, informed me that they would not be back next summer, unless there was a remedy obtained along the beach that would make it possible for them to enjoy the water; and I told them that that remedy was far beyond the control of our borough; that it was a condition existing due to the garbage being dumped at sea, and it would be impossible for us as a community, or for any individual in the community, to remedy the condition. That is a specific case which I have a record of. [1286] The complaint has been general to this extent—I am not an official of the borough, but I have done considerable work for the borough, in the line of producing a

borough booklet, at an expense to the borough, which we produced last year, in order to encourage people to come to Point Pleasant Beach. It is a simple place; and when I say a simple place, I refer to the fact that it is not a place where a person has to constantly dress up. They come down there to enjoy themselves, in the way of sports, fishing, bathing, etc.

The complaints have been mostly to the Mayor and the Chief of Police. The Mayor has referred the complaints to the Chief of Police, or to the Borough Superintendent, and the Borough Superintendent has also been at the beach at times, with a squad of men, making it possible for bathing along the beach front where the private residences are.

Where the bathing pavilions are, the bathing pavilions maintain and employ their own crew for that purpose.

But we, as private residents, along the beach front, and cottages that we rent to private families nearby for that purpose, have that done. The element of danger is mostly contained in the fact that bottles coming up on the beach, and children breaking the bottles, and wash carrying the bottles back into the [1287] undertow, and people injuring themselves while bathing in the water; a great many instances being on record, and especially the fact of a doctor, Dr. Deniston, who runs a hospital, and a great many cases have been taken to his hospital that have been of a serious character. The only personal experience that I have had myself has been with my own "kiddies," and I have been compelled, the greater part of last summer, to keep my "kiddies" away from the beach, with the garbage that has been lying on the beach; that was under the orders of Dr. Nichols, the baby specialist at Long Branch and Asbury Park. Yes, the occasion was due to the fact that he did not want the "kiddies" at their age to run the risk of contracting any disease from the garbage on the beach, from infection from the garbage. The atmosphere in the summertime is

very distasteful, especially if there is an east wind coming in, with the odor of the garbage on the beach. It draws flies—not only what we call "salt flies," but flies in general. I have gone out on the beach fishing very early in the morning, and [1288] at sunrise the flies were there, practically in swarms, and if your sleeves were rolled up at all, it has made it very, very bad.

The garbage at times is directly in the undertow and on the beach, which leaves a clear space ahead of that garbage in which you can fish. But as soon as the tide starts to go out, it carries that garbage back in the undertow, and for a distance which makes it prohibitive for either fishing or bathing. The fishing is really engaged in as a sport where we are, and that fishing constitutes surf fishing. We have surf fishermen of repute coming from all over the State and the East, that cast from our beach front. It is noted for its bass and its bluefish, but this summer was the poorest summer for bass and bluefish. Last summer it was fair.

But the garbage condition has been existing as long as I can remember. And I have been on the coast all my life.

The beach was worse this summer than I have ever seen it before.

On *cross-examination.* [1289] These people hired individuals who are there during the summer or, perhaps, all the year around residents that live back in the village, for beach cleaning, and who make their living along the beach front—we will say washing cars, doing general errands, and work of that character. They are employed so that they keep busy. Their women folks do laundry, and the men folks depend on the women to procure work for them during the summer along the beach front. The husbands of these women who work as domestics are employed to clean up the beach; not constantly, but they do general work. They might clean a car, or they might drive a person—act as temporary

chauffeur, because, as a rule, they carry driver's licenses; in other words, handy men. Generally they take two or three of the men—the residents in that given block, we will say, might have two or three of these men cleaning the beach during the week. They do that for as much protection as they possibly can get for [1290] their kiddies; because it is usually the women folks and the children that are down during the week, the men folks coming down over the week-end. Towards the paying of these people I merely contribute, along with the other residents, doing my share; because I also have kiddies, using the beach front myself; and so does my family. I have no means of knowing what is paid men for beach cleaning, except in the specific location of my residence, taking in, we will say, a block; and that runs, perhaps, between $12 and $15 a week, ordinarily, averaging, I should say, $12. On a very hazardous occasion, when the beach is completely littered and in a bad condition, then, perhaps, it runs about $15 a week, because they keep at it quite steadily.

RALPH BORDEN. [1291] On *direct examination.* I live in Point Pleasant Beach. I have a United Cigar Store agency. I sell fishing tackle, magazines, and have a sort of a general store. My place of business is at the corner of Arnold and Richmond avenues, Point Pleasant Beach. I should say it was about half a mile from the beach. I sell fishing tackle and sporting goods.

Surf fishing is quite a sport among the residents at Point Pleasant Beach, and also among the summer residents and people that come there. I run a bathing pavilion for fourteen years, up until about twelve years ago, when I got this agency, and I have been on the beach more or less all my life. [1292] My experience with the garbage has been bad, the same as the rest of them. I have seen plenty of it at times.

For Plaintiff—Ralph Borden, direct.

It has interfered with the use of the beach at times. As to whether it interferes with the development of the beach front in the community, I don't know so much about that. I have heard several complaints. I know that the Mayor and council have had several complaints from people coming here in the summer; by having a store I know a good many of the people. We have a settlement on the north end of Point Pleasant, near what is called the Inlet Section. I suppose there are in the neighborhood of probably 200 bungalows, or small buildings, along there, and at the time I run this pavilion at the beach, the pavilion was the only building on that ground. It was owned by the River & Ocean Front Land Company. I suppose they owned half a mile or so of beach front, and they gradually kept coming there building these small buildings, until now I should say there is nearly 200. I would not say that is correct, but I think there is nearly 200 of those bungalows. And I know most of those people that come there, the people that own those bungalows occupy them. Of course, there are a number of people that build them for speculation and rent them to people for the summer, and I have had people come to the store and ask, "What is the matter with our Mayor and council, that they [1293] don't come to the beach and keep the beach clean?" I don't know that there is anything set aside by the Mayor and council for that purpose or not. I have never identified any objects in the garbage with names and addresses on them. I did not take any particular notice. It is generally known that it comes from the dumps; that the garbage was dumped at Sandy Hook that came along shore, that is the garbage that comes in on the beach. I saw several times streaks of it on the surf. You can see it sometimes as far as your eyes will carry. You can see the stuff floating on the water—streaks of it. We always figured it was the current of tide that worked it that way. Sometimes it would

work to the shore, and sometimes it would disappear; and we would not know where it would be. Sometimes the wind would shift, and it would come back.

[1294] CHARLES HAVENS, On *direct examination.* I live at Point Pleasant Beach. I run a bathing pavilion. I have been in the bathing business for ten years.

Q. I have here two pictures with your name on the back. Do you know anything about these pictures (handing photographs to witness)?

A. (Examining photographs.) Yes. That (indicating) is in front of the bathing pavilion.

Those pictures were taken about in July, 1928. I cannot say that I was present when they were taken. [1295] These (indicating) were not taken for me. They were taken for the borough. They represent conditions with which I have been familiar. So far as the buildings here shown in these pictures are concerned, that is a proper representation of the buildings as they are. My bathing pavilion is right opposite this platform on the left. [1296] (Discussion of counsel.) (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 263" and "Complainant's Exhibit No. 264.") Exhibits 263 and 264 represent a typical use of the beach that is made down there at Point Pleasant Beach. That is not right in the busiest summer season, though. There is more people there than that.

This fairly represents the extent of beach available there for public use, and the buildings. My bathing pavilion is to the left of the view shown by Exhibit 264, and that the platform shown there in the upper left-hand section (indicating) is the platform of my bathing pavilion. The steps shown there (indicating) lead up from the beach to my pavilion. [1297] I have difficulty with the garbage down at my beach. At times we have to

employ extra help to clear it up, and it also affects the business, I think, in general.

The garbage come in there very largely at times—a lot of it. There are windrows along the whole beach front, I would say, 15 feet wide, and as far as you can see. To get rid of it, we rake it up and bury it, burn it, dispose of it sometimes in other ways. I can't say I have ever identified any names and addresses among it only as others have said, by crates marked New York, and like that. I have seen those crates with New York addresses on them. I have never seen any papers or billheads or documents of that kind.

[1298] On *cross-examination.* In this borough of Point Pleasant, we have a garbage collector who collects the general garbage. He is employed by the borough. I could not say what he does with the garbage.

HARRY DUFFIELD. On *direct examination.* I have lived 30 years in the City of Asbury Park, right above Kingsley street, [1299] three doors from the corner of Kingsley street. It is about 300 feet or 400 feet from the beach. I am in the hotel business. I am the president of the Asbury Park Hotel Men's Association. I have been such for two years. I was secretary for 25 years before that. I have been in the hotel business in Asbury Park for 30 years. The garbage has entered into our business program to a great extent. This is a very discouraging thing to talk about here. I will say for my guests that I have had lots of complaints from them, so many complaints about bathing that I hate to hear of it. I was on the Beach Commission before this thing went [1300] into effect, fourteen years ago, about a year and a half. The Beach Commission at that time was the old form of government here. And I had a great deal to contend with at that time about the garbage being on the beach. Mr. Greutzner was

working for us at that time, and he took the position, and we always understood that the garbage came from New York City. He had affidavits to show that the garbage was on the beach, and was affected by—I did not see it myself, but he did, and we always had that idea that it came from New York City. The name of my hotel is the Thedford. My people will not bathe in that kind of water; they will not bathe in it. Asbury Park is nice. We love Asbury Park, and I always "boost" it, and I hate to talk against it. But this is discouraging, and this is a terrible thing to talk against it. I do not knock; I boost. I do not knock any city. I boost our own city.

If we would get rid of this garbage nuisance it would be a benefit to this city. It would make my business a great deal better.

On *cross-examination.* [1301] I referred to someone as telling me something about the garbage. That gentleman's name is John Grutzner, who is right here now.

On *re-direct examination.* I have inquired in different hotels; about 70 per cent. of the people that come there, come from New York and Brooklyn; about 80 per cent. at my hotel, or about 70 per cent. of the others. That includes about twelve hotels.

On *re-cross examination.* The patronage of Asbury Park hotels that comes from New York and Brooklyn amounts to 70 per cent. [1302] Some is that, and some is over that.

Hotels like this (indicating Berkeley-Carteret Hotel) get 80; some get 60. 60 to 80 per cent. of the visitors to Asbury Park come from New York and Brooklyn.

J. WALTER BUTCHER. On *direct examination.* I live at the Asbury-Carlton Hotel, as proprietor. I conduct the Asbury-Carlton. I have been in the hotel business since 1924, and I was down here in 1912, 1913 and

For Plaintiff—J. Walter Butcher, cross.

[1303] 1914, in a hotel. My hotel accommodates at a time about 200 guests. We accommodate somewhere around 15,000, taking the whole year. My guests run between 80 and 85 per cent. from New York. New York alone, 80 per cent. I have encountered difficulties with the garbage on the beach, considerable. I should say between 60 and 70 of my guests go in bathing, especially in July and August. And it has been as high as a week or ten days that they could not go in on account of the garbage. I have had some guests that claimed they had been affected by it, and I have had several guests that have been injured by refuse that has been in the ocean, especially one lady last July was laid up for over three weeks. She got [1304] hit by a piece of lumber that was in the ocean. Bathing is the chief attraction which I hold out to my guests. My business relies on the use of the beach here to the extent of 75 to 80 per cent., I claim. That is all they come here for during the summertime. I have seen the garbage on the beach myself. Last September we had a northeast storm here, and the beach then was literally covered with damaged onions. Nearly everybody on the West Side was gathering up all the good onions they could find, which were very, very few. In August we had another storm, and the beach was literally covered with refuse. When I say "refuse," I mean all kinds of produce. In August it was mostly grapefruit and oranges. It was used fruit; mostly used fruit. [1305] It was the same thing as the garbage that would be turned out of any ordinary kitchen. I have identified several objects, as to the source from which they came. I have seen several boxes down there with New York addresses on them. I have never picked up any paper, or anything of that sort to identify it.

On *cross examination.* Those names were trade names, mostly from Washington Market.

For Plaintiff—William H. MacIlroy—Weslie Potter, direct.

On *re-direct examination.* By "trade names," I mean [1306] the produce men in Washington Market, the names of dealers.

WILLIAM H. MACILROY. On *direct examination.* I live at 205 Third avenue, Asbury Park. I am in the hotel business. I occupy the Albemarle. I accommodate at a time about 100 guests. We have a great many season people, and the total number of them last year in the house was 800. Most of the people come for long periods of time. [1307] About 40% of my people come from New York City. Mine has always been a Pennsylvania house, mostly people from Pennsylvania cities. My only experience with the garbage has been with complaints from my guests. They come down here for the bathing and the air here, and if they go down there to bathe and there is anything in the water, why, they will not go in, and they come back, and, of course, they always find fault. I know of two or three occasions last summer, and very, very often it is very bad, and then they speak of it very often. It is a matter of common complaint among the hotel guests at times. I think it keeps some people from coming in. [1308] There is a general advertising program among the hotel men to attract people to Asbury Park.

WESLIE POTTER. On *direct examination.* I live in Asbury Park. I am Superintendent at the Deal Casino. It is a bathing pavilion in the Borough of Deal. It is a municipal pavilion. We have a beach front connected with the pavilion. [1309] It is between 300 and 400 feet long, between the two jetties. We have difficulty there with garbage. I have seen it along the beach, I will say, six inches deep, where bathing absolutely stopped, and we had to get a gang of men and take shovels and rakes and dig a trench across the beach there and bury it. That does not occur as bad as that very often. We

have garbage conditions at intervals, not continually; if you get a northeast wind, that is when you get it the worst. I don't know about the dumping grounds. What effect it has upon our pavilion, or our business, I could not say. [1310] As to the beach—we have to get down there and clean it; that is all before the people get down there. Our establishment accommodates, I would say, approximately 800 to 1,000 people a day, that is the Casino proper. I think 90 per cent. of our people come from New York and Newark. I could not say what proportion of them come from New York, but I think the majority are from New York City. [1311] I have never identified objects that had names and addresses on them. I never looked for it. I do not know how much its costs us to keep the beach cleaned a year, because our beach, right in front of the Casino, is cleaned every day by our own men, employed there at the Casino. The rest of it is cleaned by the borough. I don't know what that costs. The garbage does not affect our pool in any way. We established a filter, to filter the water that came out of the ocean, that Mr. Procter testified to. We have twelve filters. Without those filters, the pool would not be what is is, because you would have dirty water. I think [1312] almost every pool along the coast has those filters. I have had experience with the use of pools without the filters. I had an all night job staying out there in the ocean with the fire hose, to play it along this pipe and keep the garbage, seaweed and stuff away from the pipe, so that we could fill the pool. It did not keep the garbage from coming into our pool; it was black. The filter was the method that we adopted to keep it out.

On *cross examination.* We use a suction pump to fill our tanks. We have twelve filters connected with this surf pumping on a ten inch suction line.

For Plaintiff—T. F. Burley, direct.

[1313] T. F. BURLEY. On *direct examination.* I live in Asbury Park. I am the Executive Secretary of the Asbury Park Chamber of Commerce. I have been in that business for eleven years. I have been connected with the Asbury Park Chamber of Commerce for approximately three and one-half years. The Asbury Park Chamber of Commerce takes care of the municipal advertising; promotional activities of the re- [1314] sort and carnivals; baby parades; placing of the newspaper advertising; the directing of publicity; the securing of conventions; the issuing of pamphlets and literature; the preparing of copy for newspapers; and the general promotional activities of the resort. In other words, we are the advertising center. We answer the inquiries, and in conjunction with the information booth on the boardwalk, we work together in conjunction and conduct all the contacts with the outside world. I have here a report. The Mayor gave you a resume this morning, showing that in the last four years we spent about $615,069.50, or something of that sort for advertising, publicity, literature, securing of conventions, excursions, etc. We have some data showing that the clippings received that concern Asbury Park were published in 2,235 newspapers.

Also conventions during the past few years, of which we have a record. There are small conventions that we do not keep a record of. There were 106, with an aggregate attend- [1315] ance of 78,105. And the excursions, which you know are only a small portion of our business, the automobiles bringing in the majority, run to a total of 560,010 people.

Of course, the report deals with amounts collected and disbursed. Publicity bureau, 10,301 of the various types. I do not think that would be of interest to you, the types of literature that we put out. It is all descriptive, the idea being to induce people to come to Asbury Park. We offer to them as an inducement an immaculate beach. You have had good descriptions of what we deliver. It finds

me and the Asbury Park Chamber of Commerce in an embarrassing position. But we want to fight this pollution, because it is our public duty, but at the same time that we fight it, it drives people away, and we are rapidly gaining a reputation for being an undesirable beach.

If you can quite realize that the investment in Asbury Park for its beach front can only be justified by the recreation facilities, namely, bathing—without bathing, we would not be a playground; and as the Mayor outlined to you this morning, with the millions being spent on the construction of proposed hotels, and the hotels already here, if we cannot [1316] deliver a bathing beach that you can bathe on, we hate to think of the future. And the reputation that we are getting on that is doing us untold harm. But the fact of the matter is that it has to be cleaned up, with this reputation spreading, that our beach is unsanitary, and with the refuse in it is unhealthy, simply means practically ruination to us all.

The attractions of Asbury Park that appeals to the visitors is, of course, primarily, bathing, and by bathing, I mean surf bathing. And then we have other attractions along the boardwalk. That is the chief industry, in fact, it is the only industry in Asbury Park.

On top of that, we have beautiful lakes in the background, and we have the golf course, drives, and bridle paths. All of those things being right in the shadow of New York, we ought to be the largest resort city in the country.

[1317] The Atlantic City situation is not to be compared to Asbury Park. It is on a swamp. You have to go through a swamp to get to it. It has good bathing, and you cannot take it away from them.

Look at their hotels. There is no question about it. With millions invested, as compared with ours, and look how far they are away from the center of population. We are right within the shadow of the City of New York.

For Plaintiff—T. F. Burley, cross.

The difference, from my point of view, between Atlantic City and Asbury Park, on the question of development is simply this, that our bathing, as a result of this filth unmentionable refuse that comes on the beach, has been such as to drive them to some place where they get clean, healthy bathing. That is the answer. Because we have so many added attractions that Atlantic City cannot offer, because it has not the natural advantages that we have. These complaints of garbage on the beach come to me, numerous complaints, especially renters and the real estate people are yelling. They cannot rent the houses. They do it one year; but when you come down here [1318] to bathe, and you bathe around amongst the refuse and dirt and unmentionables, you are not coming back. That is the difficulty that we have in our business from the garbage. We spend the money to get the people, and after we get the people, we cannot produce the thing we had promised them to produce: clean, healthy, wholesome bathing.

There is not anything else in the way of performing our promises that we have not done. We have clean sand. We have a level beach. We are building the beaches up all the time. The jetties are being constructed. We have the ocean, we have the beach. You take the pollution away, and we are perfectly happy.

On *cross examination.* I imagine the publicity bureau has been maintained a number of years. I have only been connected with it three and [1319] one-half years. It has justified its maintenance each year. Asbury Park is growing, and the continuance of the publicity is helping it; that is true. The values of the lands in Asbury Park have increased, but I do not think necessarily in other municipalities. The municipality is constructing this great big convention hall. They have undertaken that within the last year. It has been contemplated a good many years, but actual construction took place during the last two years.

SELAH H. VAN NESS. [1320] On *direct examination.* I live at 301 Sunnyside avenue. I am in the hotel business. I operate the Lakelyn. I have been in that business for 27 years, in Asbury Park.

I accommodate at a time about, 125 guests. I have not figured out how many I entertain during a season or a year. About 25% of my guests come from New York City. I have had experience with the garbage on the beach. [1321] My experience and testimony will be a re-rehash of what the guests have said to me. Personally, I have not examined the garbage. I have seen it. I have seen all sorts of refuse. But as to personally seeing any particular evidence of it coming from any particular place, that I could not testify to.

But I have in mind a number of persons who have come to me, and they said this to me, "Mr. Van Ness, what is the matter? Cannot something be done about our beach? We have to go to Allenhurst to bathe." I said, "What is the trouble?" They said, "The beach is so filthy with rubbish and garbage that we will not bathe here." They go to Allenhurst on account of the pool—they take pool bathing rather than the ocean.

This complaint has occurred every year [1322] I could only say that as hearsay, whether it has increased or not. But it has been a complaint for a number of years. More people have complained each year. The complaint is in the ascendance.

MISS EDITH W. McCONNELL. On *direct examination.* I live in Asbury Park. I am with the City Director of Information. [1323] The functions of my department takes in several things. Of course, primarily, it is information. It is a bureau to answer questions of all kinds of the people who come here.

Then, in addition to that, we send out literature, and we keep records of excursions, and conditions, and things of importance to the city. I compile a yearly report. I

have with me a copy of my report for the year 1928. It covers the mail we receive, the amount of inquiries for booklets, that is, hotel folders and descriptive folders, it also contains the number of inquiries we have had at our office, general inquiries—inquiries for railroad information; for bus information and for general information. It also contains the names of the excursions that come here from the Central Railroad of New Jersey and the Pennsylvania Railroad, a list of the conventions that were held here, and as nearly accurately as possible, the number attending those [**1324**] conventions, and also a newspaper clipping report, that is, the number of clippings we got from various newspapers in the different states. We had the mail inquiries from the hotels from the various states. That is, every time there was an inquiry for a hotel booklet, we made a card and filed that card, according to the states. At the end of the year we count up the inquiries and tabulate them according to states. Page 2 of my report says "Mail Inquiries for Hotel Folders." It covers 35 states. The largest number of inquiries is from New York State. That includes all of New York State. It shows 1,034 inquiries. The highest number from any other state is from New Jersey. [**1325**] That number is 764. The next highest is Pennsylvania, with 375. New York is by far the largest.

Part of our activities is to send to the different travel bureaus, such as "Ask Mr. Foster," and other travel bureaus, located in express offices, and so on, throughout the United States, and also Canada—we send them our literature in bulk, that is, sometimes they want 100 copies, or 200, and we have sent as many as 1,000 to these different distributing bureaus, and they give them out to people who inquire for resorts. And in 1928 we supplied 82 travel bureaus with 34,205 of our booklets, of the literature that we distribute. I have copies of that literature with me. I have written on a sheet here (indicating) "Excursions for 1928" and for several years

past. [1326] In 1928, it is the trainloads of excursions that came here from the Central Railroad of New Jersey, and also the Pennsylvania. There were 1,852 carloads of people. (Discussion of counsel.) In 1924, there were 2,564 carloads of [1327] people, with 256,400 people.

In 1925, there were 2,633 carloads, with 263,300 people.

In 1926, there were 2,705 carloads, carrying 270,500 people.

In 1927, there were 2,082 carloads, carrying 208,200 people.

In 1928, there were 1,852 carloads, carrying 185,200 people.

In 1929, there were 1,605 carloads, carrying 160,500 people. Beginning with 1924, there were 15 conventions, attended by 8,200 people.

In 1925, there were 21 conventions, attended by 6,320 people.

In 1926, there were 23 conventions, at which 23,975 people attended.

In 1927, there were 25 conventions, attended by 8,800 people.

In 1928, there were 27 conventions, attended by 6,900 people.

In 1929, there were 31 conventions, attended by 38,850 people. [1328] There is a diminution in the number of carloads and people shown in the train transportation. For the last three years, the excursions have been coming into Asbury Park in bus loads, but up to this time I have not been able to get any information from any particular organization. But this year the Public Service Company in Newark sent us their list of excursions. And there were 408 of their busses—I have that here in detail. The bus loads coming in in 1929 carried 12,240 persons. In addition to that and in the same parking space where the Public Service Company busses arrive, I was given the figure of 200 other busses that also came into that place. That is, I do not know what they were, other than the

word of the Public Service Company's checker. I have this general report that I made to the Mayor for 1929 (indicating document). That (indicating) is a carbon copy for 1929. This is 1928 (indicating document).

[1329] They are compiled in the same manner and from the same kind of records. (The documents referred to were [1330] received in evidence and marked, respectively, "Complainant's Exhibit No. 265" and "Complainant's Exhibit No. 266.")

On *cross examination.* In the year 1929, the number of persons that attended conventions was 38,350. We had a state convention at that time.

This record does not show the number of people that have come to Asbury Park in private cars. There is nowhere that I could get that information. This record here does not indicate the total number of people who come to Asbury Park, we could not possibly get that. The total number of people who came was greatly in excess of the figures that are indicated on these records. [1331] I could not say whether with all the large cities in the vicinity, the greatest number of people who come to Asbury Park come from the City of New York. The hotel men have testified here, the Asbury Park hotel men, that their own patrons came from the City of New York, to the extent of from 70 to 80 per cent., and I know this, that from our inquiries, from our mail inquiries, they are so far ahead, coming from New York than from any other State in the Union, that it would seem to indicate that those figures are justified. But we keep no book of any kind, that is, no sort of registration book, you see.

[1332] On *re-direct examination.* Here are some of the folders, six in number. These folders are issued by my department advertising Asbury Park. (The folders referred to were received in evidence and marked, re-

spectively, "Complainant's Exhibit No. 267" to "Complainant's Exhibit No. 272.")

JOHN J. WOODS. [1333] On *direct examination.* I live in Asbury Park. I have the Asbury Park fishing pier concession opposite First avenue. I have been in that business for four years. I rent rods and fishing. I sell bait—all kinds of fishing tackle. The pastime is indulged in here at the pier every day during the summer. For three months in the summer, I serve on an average, 500 people a day on the pier. I encounter difficulties from the garbage, I sure do. [1334] It stops renting the rods. The boys don't fish when they see the garbage in the water; they stop their fishing; I don't sell any bait, and I don't sell any tackle. It interferes with my business probably a day or two days, possibly three days at a time. That occurs whenever we have a northeast storm. The storm itself interferes with the fishing sometimes, and lots of times it does not. I do a lot of fishing on the beach myself. I am on the beach nine months in the year, surf fishing. I fish right here at this jetty (indicating jetty adjoining hearing room) and find a lot of garbage.

I have identified objects among the garbage that had names and addresses on them lots of times. I have found many crates, pads—I could not tell you exactly what; they come from New York, a good many of them. [1335] I pick them up and read them; they are on the beach. They had New York names and addresses on them.

This is a matter of general difficulty and complaint, whenever we have a northeast storm; it really stops fishing; you can't do any beach fishing when there is garbage coming in on the beach; it is impossible to fish.

On *cross examination.* It is during the northeast storms that my business is interfered with.

For Plaintiff—D. Hubert Chester, direct.

On *re-direct examination.* When I speak of a storm, I mean a northeast wind; we call it a northeast storm. I mean a northeast wind, whether it is accompanied by rain or not.

[1336] On *re-cross examination.* When I referred to a wind storm, I meant the wind as blowing at quite a high rate of velocity, a very strong wind. That is the only time, when this very strong northeast wind is blowing, that there is any effect upon my business.

D. HUBERT CHESTER. On *direct examination.* At present I am living in Asbury Park. [1337] I have been coming to Asbury Park for 25 years. I am an engineer. My business takes me all over the country. At the present time my office is in New York. It has been in Buffalo, and Houston, Texas. It depends on the work. It depends on where the work is. I have seen the garbage on the beach all the way from, you might say, Loch Arbour or Point Pleasant, down to Bay Head. Quite a number of years ago, some 20 years ago, I was living at Point Pleasant in the summer. And we had a storm there that brought in all kinds of garbage. We sat there at the bathing pavilion and watched it come in—crates and fruit and refuse of all kinds. [1338] In that particular case, that looked to me like a lot of fruit had been dumped over from a glutted market. A lot of it came in crates; lots of it was loose. I have seen it here at Asbury Park many times in the last fifteen years, when you have garbage up on your beach. A couple of years ago, I saw it from Loch Arbour and Avon. It was vegetable and fruit garbage—used stuff. We saw some animals, two, that floated in. A few days ago, I went out to this jetty that they are putting in, and I picked up there a memorandum book, or apparently a book that was used for delivering by one of the Butler Stores in New York. It had a list of addresses; it looked like addresses where they were delivering goods

For Plaintiff—D. Hubert Chester, cross.

to customers. It might be termed a grocer's delivery book, a memorandum book, a full memorandum book, that a man would carry in his pocket. I picked up a couple of Sheffield Farms' milk bottle [1339] tops. The address on them was 125th street, New York. It was pasteurized and gave the address on it. I have a family, and they come down to the shore, and I know for one thing that they do not use the privileges here during those periods that they have garbage on the beach; and I have seen very few people in bathing at those times, as compared with when the beach was clear.

On *cross examination.* I referred to a memorandum pad of the Butler Stores. I found it right out here (pointing to the beach), where they are putting in this jetty. I was out there with the superintendent watching the work at the time they were scraping [1340] this beach up, and the boardwalk. I do not know whether the Butler Stores have a chain of stores in Asbury Park. This was an address in New York City. It was on Upper Broadway, around 140th or 145th street. I do not remember the number of that. I mailed this book to that party. I went to the information bureau and mailed it back to him. It was on Upper Broadway, uptown. It had a man's address on it. His address, I think, was 185th street, or it was uptown somewhere. I did not pay much attention to it. The book looked as if it might be of some value. It looked like a memorandum book that, if it was not out of date, would have some value. I sent it back, just as I would appreciate a man sending my own book if he picked it up. He lived on 185th street, and this was one of those stores on Upper Broadway. This book had the address of the Butler Stores, and also his personal address, on the inside cover of the book. [1341] I do not know whether it was 140th street. It was uptown, in that neighborhood, because most of the addresses were in that neighborhood, all the way from 140th to 150th streets—some of the cross streets. It was

not any book that was printed by the Butler Stores. It was a private memorandum book. I had the store address, which was on Broadway, and he lives on 185th street; so I do not know whether it was of any value to him or not. I had a return address on it. I never heard from it.

HAVELL KEYLER. [1342] On *direct examination.* I live in South Belmar. I am a foreman for the City of Asbury Park. My duties include keeping the beach in shape. I have been engaged in that work for the last eight years on the beaches of Asbury Park, as foreman. I have had to do with the removal of the garbarge. It comes in places, especially around the jetties, and when it comes there we have to clean it up and get it off before it starts smelling and gets around to the [1343] public. We have that difficulty after every storm. It is mostly on a blow, a northeast blow. The material that we get as a rule is mostly vegetables, grapefruit, peels, orange peels, turnips, carrots, watermelon rinds, parsnips, cabbages—mostly all in a vegetable line. I have seen cats and dogs and pigs—well, I will not say pigs; I will say pig; because I only seen one. I have not seen any meats, but I have seen chunks of a sort of suet and fat, like. After that kind of material, there is a greasy streak on the beach; it is a sort of a tallow, acts as a sort of a tallow. We rake it up and cart it away. [1344] We cart it to our dump. That is, I should judge, about a mile and a half out Asbury avenue. I think they call it Neptune Township. It is out in the country district, in the back. I have identified objects in this garbage with names and addresses on it. I can't just place them now, just what they were. The community or municipality I have seen named on those packages was New York. Those things that I saw names and addresses on consisted of crates and boxes. I have seen a few milk bottle tops, and things like that. [1345] I

have times there that took us two days after a storm to clean the beaches. I have seen the garbage floating in the ocean. It was in streaks; it would cover spaces anywhere from a quarter of a mile long. To look at it from offshore, I would say it was 15 or 20 feet wide. I have seen bill stubs, or cancelled checks, or receipts, bearing New York addresses, but I don't just replace who they were. I do not recall the names.

JOHN G. GRUETZNER. [1346] On *direct examination.* I live in Asbury Park, New Jersey. I am Superintendent for the City of Asbury Park. I have been such since 1918. Before that I was Chief Engineer from 1914 to 1918. I have been at work on the beaches of Asbury Park for 25 years. My duties as Beach Superintendent are to take care of the beach front—anything from east of Ocean avenue. I have charge of the removal of the garbage from the beach, in the capacity of Superintendent, and the men work under me. [1347] The city has spent for jetties $1,516,400. This includes this contemplated new jetty at Fourth avenue, which has already been authorized and is in course of construction. The city has spent for boardwalks $250,000; the valuation of boardwalks is at present $250,000; and we have an additional $210,000 appropriated right now to widen that boardwalk to the extent of 60 feet, to the ultimate width of 60 feet. The boardwalk is seven-eighths of a mile long. We are going to continue a uniform 60-feet boardwalk the whole length. [1348] The convention hall and theatre, the Casino and the heating plant, which is under the three new buildings that we are building—they will amount to $5,000,000. The present buildings that we have on the boardwalk represent $1,200,800. That is, in addition to the convention hall and theatre and Casino. The aggregate of the investment, outside of the land, that the city has made to improve this beach front is between $7,000,000 and $8,000,000 nearly $8,000,000. These facili-

ties are maintained for all the year round. These facilities are open practically all the year around, except the Eighth avenue bathing group; the Third avenue bathing group and the Fourth avenue bathing group. They are closed for the winter season. But we main- [1349] tain an all the year around bathing proposition. Along the boardwalk we have fifteen major buildings. Our boast is to have a clean beach, and after each northeast blow, or southeast blow, there is a quantity of garbage that comes on the beach, and we have to remove it as quick as possible.

Mr. Minard. I offer these six photographs of the beach in evidence as Complainant's Exhibits Nos. 273 to 278, both inclusive.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 273" to "Complainant's Exhibit No. 278," both inclusive.)

Complainant's Exhibits 273 to 278, both inclusive, were taken on June 10, 1929. I took them. [1350] They represent the beach after the northeast storm. The material on the beach include wood and garbage, tin cans, bottles.

Mr. Minard. I offer these seven larger photographs in evidence as Complainant's Exhibits Nos. 279 to 285, both inclusive.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 279" to "Complainant's Exhibit No. 285," both inclusive.)

I took Exhibits 279 to 285, both inclusive, at Asbury Park, February 6, 1929. They show garbage, bottles, cans and boxes, orange and lemon peelings; some wood. Right here in this picture, Exhibit No. 281, dead cats and dogs were laying there. Picture No. 281 shows orange and lemon and grapefruit peelings, cans, bottles, boxes,

dead cats and dogs, onions, wood, broken crates and some large pieees of wood. [1351] That picture was taken right out here, where that strip of the beach is there (pointing to the beach). The things I found are all marked on the picture. Here is Picture No. 279. I took a letter there, which I found in a bundle; it was addressed to Thomas Bender, 350 West 47th street, New York City. It is a registered letter. The address in the upper left-hand corner is Nardin-Meyer Motor Corporation, 639 West 125th street, New York. When I found it, the letter was enclosed exactly the way it is. It had the stamp on here (indicating), and it was in this bundle of paper marked with a cross there (indicating). There was a newspaper wrapped around it. [1352] This is the letter that was contained in it, from Nardin-Meyers Motor Corporation, 639 West 125th street, New York, to Thomas Bender, 350 West 47th street, New York City. The letter is dated August 15, 1928. The envelope shows a New York registry division; "8"; in one place it is 8/15/1928, and another stamp is August 15, 1928, this same date, of course. In other words, the registry stamps on this envelope show it was mailed the same day it was dated. I found it on August 24, when I took these pictures; in other words, nine days after the letter was mailed. (The letter and envelope referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 286-A" and "Complainant's Exhibit No. 286-B.")

Exhibits 282, 283, 284 and 285 were taken February 6, 1929. [1353] They have the dates right here (indicating). Exhibits 279, 280 and 281 were taken on August 24, 1928. They were different dates. It gives you a sight there (indicating) of orange peelings, lemon peelings, grapefruit, bottles and cans and boxes. Here (indicating) are pictures taken on March 2, 1927, after a northeast storm, a northeast blow.

For Plaintiff—W. Lyle Kinmouth, direct.

(The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 287" to "Complainant's Exhibit No. 297," both inclusive.)

Exhibits 287 to 297, both inclusive, were taken to show garbage on the beaches March 2, 1927. [1354] On Exhibit 295, I picked up—that is, at the foot of Second avenue—no, I would not say Second; it is in front of the natatorium; it is between First and Second avenues—I picked up a bundle of papers, wrapped up, tied up, and here (indicating) is the stuff it contained.

That was picked up by me at the place indicated on Exhibit 295.

[1356] J. LYLE KINMOUTH, on *direct examination.* My post office address is Asbury Park, New Jersey. I am the publisher of a newspaper, the Asbury Park Press. I have published the paper between 34 and 35 years. During all of that time practically I have been in Asbury Park. I have been Beach Commissioner of Asbury Park from 1903 to 1905, when they took over the property from Mr. Bradley. In my official connection with the beaches, and also in connection with my business of the newspaper [1357] publishing, I have had experience with the garbage conditions on the beach. When I first came here, the question was new to me, and I was very much interested in it, and I spent a great deal of time down at the ocean, and noticed that Mr. Bradley, the then owner, had men who, early each morning, would go up and down the beach, and if garbage or wreckage or anything would come in to litter up the beach, he would have it either buried, removed, or if the tide and wind was high, they would shovel it back into the ocean and let it go on.

When I was made Beach Commissioner, that was one of the problems that we had to deal with, and we found it necessary to instruct men, or have men to do this same work, and there would be quite some periods when there would be no pollution, you might say, on the beach front,

and other times it would seem to come in daily, depending largely on the wind and tide conditions.

We took the matter up with New York City, and I am not able to state the date, but it was during the time I was Commissioner, or shortly thereafter, we were invited to inspect a new incinerator—I think they had some other word for it—plant that had been installed, as I remember it, near New [1358] Brighton, or on Staten Island, according to my recollection, the then mayor, ex-mayor, I think he was then mayor—Bruce S. Cator, and Beach Commissioner—or at one time Beach Commissioner, I am not sure of the exact time of this—Charles Atkins, and myself made the trip to Staten Island and inspected this incinerator plant which we found in operation, and the principle of it was that they made a single collection of refuse, paper, trash, garbage of all kinds, into a single receptacle and dumped them into this incincerator. And they explained that, summer and winter, the proportion of acids and greases, paper and the like, remained practically constant, so that it consumed itself without the use of any coal after the fire was started, and they claimed that they maintained a heat, I think, of around 2,400 degrees, as I recall it, and that at that temperature there was no odor. That they were making a sort of clinker block, like our cement, from the residue of this furnace, and they had some rather odd shaped bottles, and things burned in glass, and they thought that they would get a market for that that would be of some value.

And we came away, believing that it was only a question of a few years when these things would be installed, and the nuisance would be abated. I think it was around 1905. I would not want to state that definitely, because that could be checked, as to [1359] when they built this preliminary incinerator plant. It was approximately that time. Representations were made to us as to the time when this garbage dumping would be discontinued.

For Plaintiff—W. Lyle Kinmouth, direct.

I would not say they were made by the mayor. We were met by a committee, and I think this committee were largely the men that were installing the plant. It may have been city officials, but I am not sure. It was a demonstration to us that this matter was being taken care of, and we went over there to be sure that it would be taken care of. It was the agitation that we had had down here that brought about the meeting. It was our complaints, and we were told they had one plant in operation and would build other plants to handle the entire output. I think about three years later, as my recollection runs, when McClellan was mayor of New York City, we had an unusually bad condition down here; it was especially bad here and at Bradley Beach.

And Mr. Somers—I am not sure of his first name, but he [1360] built the Lorraine Hotel in Bradley Beach. He came into the office, as people come into a newspaper office—there were people coming in to tell us of the terrible condition on our beach and complain about it—and he came in, and we talked it over, and I said, "What we ought to do, if we had any way of delivering this stuff, to send some of it right to the mayor, and let him get a whiff of it." "Fine," he said.

"I know his doorman"—or secretary, or somebody; and he said, "They have a meeting, I do not know what they call it, of the city fathers"—And he suggested doing that, and he named a day, and said, "Suppose we get two or three packages of that stuff, and I will arrange to have it in the room when they are in there, and I will try to get it opened there."

And he was quite in with the idea. We selected two old butter firkins that we thought would not sweeten the atmosphere, and we put in the usual assortment of rotten vegetables, and grapefruit, and odds and ends—everything we could get.

We got as good a collection as we could.

For Plaintiff—W. Lyle Kinmouth, direct.

We bottled it up Monday, and had it opened about Wednesday and Thursday; and I understand it produced an effect in the Board of Estimate, or whatever you called it. That was our joke. I do not recall what other attempts I have participated in to [1361] bring it to the attention of New York City. I have not been an official since that time, and there are no direct appeals that I have made. We have had to be rather cautious in the paper in printing a lot of this stuff, because some people would take it that we were injuring the town, when we were trying to protect it. So that the protests have been made on the side, more than by publication. But I have fished along the beach from here to Barnegat, and from time to time I think those conditions exist all the way down. I have had people tell me that they came here for the bathing and for the ocean, and that it was not fit to go in, and that they were not going to stay. This city and the other resort municipalities along the shore rely upon the ocean and their beaches. I do not know of any other excuse for the existence of the towns. It is not farm land. I do not recall particular instances of what I have done editorially, or as a newspaper publisher, to bring this to the attention of the authorities of the State of New Jersey, but in a [1362] general way we have been working on it. Practically everybody—the governing body of the city has been more or less busy on it all the time, and the newspaper—we have worked on it, but as I said before, it is rather a ticklish thing to bring out in the open.

I have been convinced that the garbage was injurious to the community. Now, I am not prepared to say that this was what they referred to. But I am interested in the Monterey Hotel here, and a year ago last July a group of seven that had been long-seasoned guests there for several seasons, came to the desk and asked for Mr. Jannis, the manager, and they told him that the hotel never was in as fine shape; that its service was everything they could ask for, and the treatment in every way was very satis-

factory; but they said, "Your beach is a mess, and we will not put up with it," and they left.

Now, whether they referred to—they just said "The beach is a mess." Now, there was some building going on at that time, and I am not prepared to say, but I do not believe people would leave, because they were not building then to the extent that we are now. There was only one building operation. [**1363**] They might object to the building. We had the usual proportion of garbage on the beach. I am not familiar with pollution of the beaches prior to 1905. Since that time it has been going on. It seems to be increasing in quantity at a pretty good rate. As to the City of New York plan of building incinerators, I made an investigation two or three years after that, and they told me that they were not a success, and that the use of this plant was discontinued. The subject of beach pollution is intermittently a source of complaint year after year in the community. There would be times when this pollution would be there; and other times when this beach is perfectly clear. [**1364**] I haver never gone out to see them dump; but I have seen the scows when coming down on the Jersey Central boats, "Sandy Hook" and "Monmouth." I have seen the scows going out, and pointed out to me as the garbage dumps that were maintained by the city. They looked like garbage. The stuff was piled mountain high, I think. They were just piled up like that (indicating); it looked as if it would run over the sides, almost.

On *cross examination*, I cannot fix the date when I visited Staten Island and inspected that incinerator plant. As I say, it could not have been as late as 1908, and it could not have been before 1904. I do not think it was 1915. I just state the fact that this plant was in operation, and at that time there were some [**1365**] of us who were interested in that thing, and had been carrying on the agitation, and went over and inspected it. I do not remem-

ber who was mayor of the City of New York at the time of my visit. We did not get in contact with him. The only time we got in contact with him was the time we sent the garbage to Mayor McClellan. I do not know from whom I ascertained that the incinerator at Staten Island was abandoned. We made inquiry, and I understood that it was not a success. I really cannot state whether this inquiry was made at or about the time of the war. I think it was before then. That would be my notion. I have not any dates in mind, however. I cannot tell you what is the last inquiry I have made in regard to incinerator construction in the City of New York. I have not made any inquiry personally since that time. As I say, I have not been an official. [1366] I cannot give you any date. This thing has come up from time to time, and complaints would come to me, and as I said, we had to keep it out of the paper. I do not know anything about the program now in progress or projected in the City of New York; only I have the general impression that it has been—for one reason or another it has been delayed. I have not any impression that it is being pushed. Maybe I am wrong. Garbage is disposed of by burying, and by being turned back into the sea. That was to try to clear the beach up before the people would come out. If there was a good incoming tide, it would rake that stuff down, and you could take it. Otherwise we had to bury it. (Discussion of Counsel.) [1367] I know it was done when I was commissioner, and I have understood that practically the same methods were followed since then, to get the beach cleaned up before the guests came down to see it. I have not been down at daybreak very often since then.

HON. GEORGE S. SILZER. [1368] On *direct examination.* I live in Metuchen, New Jersey. I suppose I am a banker now. The name of my bank is Interstate Trust Company, 37 Wall street, New York. I was the Governor of New Jersey during the years 1923, 1924 and 1925.

For Plaintiff—Hon. George S. Silzer, direct.

Before that time I had been prosecutor, Senator, Circuit Court Judge. I think that was all. I was Senator from Middlesex County for six years. I have been familiar with the question of the garbage pollution of the New Jersey beaches practically only since the time I was governor. [1369] In a general way, I think Mr. Eller, who was connected with the Newark Sunday Call, called my attention to it, and another man, I have forgotten what his name was—Raymond B. Smith. This letter from Mr. Eller of June 25, 1923 is the letter that I received. That is when I started in on the work. I took it up before that. Mayor Hetrick, I think, wrote a letter to the Mayor of New York, and he told me about it, or wrote about it. I than took it up and investigated it, and apparently the New York people took the position that the garbage was being disposed of as the Government provided; that the boats were under Government supervision, and they were all the time under the inspectorship of the Port, and they were dumping according to the provisions. And there was a great deal of correspondence on that subject, and I finally made up my mind to find out whether this was true.

I then had one of the New Jersey boats, I think it was [1370] one of the "Eagle" boats at that time—go out and follow one of the scows, or one of the group of scows, and they found that they only dumped five miles out at sea, instead of the amount that they should.

And then I think I took it up again with the Commissioner of New York, and Fremont, who was then the Supervisor of Harbors, wrote a letter, and I told him, too, what was happening, and I think he justified himself by saying they had inspected the boats, and that they were going out so far.

I then told him that there must be something wrong in the way the thing was done; either they did not go out far enough, or else the going out was not sufficient. That went on all through the year 1923.

For Plaintiff—Hon. George S. Silzer, direct.

In 1924, in the early part of the year, I took it up, I think before the season started here, and asked Dr. Price, who was then the Chairman of the Board of Health, to look into the matter and get what evidence he could, and to check up, if I remember right, the sewage plants which were located on the New Jersey shore.

He checked that all up, and made a report to me. There was more or less discussion during 1924, and in 1925, I took it up with the Department of War, and I have those letters here (indicating), (Discussion of Counsel.)

[1371] The first one that I find here is a letter to the War Department, dated September 10, 1923, in which the War Department explains how the permits are given, and what the purpose is. Then comes a letter from Mr. Hetrick, in which he complained to Mayor Hylan of New York. That is June 16, 1923. Then there is a letter to Mayor Hetrick from Mr. Taylor, in which he says "there must be some mistake about the litter and trash which is washed up on the beaches coming from New York City. The garbage from this city is towed a distance of 25 miles from the Scotland Light, under orders of the Supervisor of the Harbor of New York. Each tow is accompanied by a United States Government Inspector, who sees to it that no short dumping is done."

That is what led me to the investigation, because he claimed that it was not due to New York.

[1372] Another letter was from Mayor Hetrick to me, in which he describes what took place in his conversation with the Mayor of New York. I do not think there is anything particular about that.

The next letter, dated August 15, 1923, is from Mayor Hetrick to me, in which he speaks about a meeting that was going to take place.

Then I had Mr. Jelliger, who was interested in the newspaper business, make a report to me, and he gave me a copy of the speech of the Health Commissioner of New

York. The only pertinent part of that is that he describes how the collection of ashes, garbage, and rubbish, and street sweepings are removed in horse-drawn and motor vehicles. "Horse-drawn vehicles have been the mainstay of the garbage collection service, but this is fast being displaced by motor trucks. After the material is collected, it is carted to the dumps located along the water front. Several different types of dumps are used, from the old, unsightly, unsanitary open dump to the present one. Modern types of dumps are being acquired as fast as the money is available, the old unsanitary dumps being replaced. At present the garbage is dumped onto bottom and side dumpers, and they are dumped according to the Harbor Regulations."

This is important:

> "During the year 1922, we collected and removed and disposed of 1,360,000 carts of ashes, 3,000,000 cartloads of [**1373**] rubbish, and 650,000 cartloads of garbage, which was more than the combined total of fifteen of the largest cities in the United States, and more than seven of the largest cities totalled."

Mr. Gallagher gave me some further information of that kind, but I do not recall it.

"July 14, 1923."

This is a letter from Lewis Compton, Lieutenant Commander of the Navy, addressed to my secretary.

It reads:

> "We made contact with the Tug Bouker #16 towing two garbage scows marked Bouker #78 H and #16 H off Scotland light vessel at 6:50 P. M. 60th Meridian time. These barges dumped their load of garbage at 6:55 P. M. one and one-quarter miles East North East of Scotland light vessel, which is anchored 3¾ miles of the coast of Sandy Hook; therefore making the distance that they were off shore at the time of dumping exactly 5 miles by measurement on U. S. Coast and Geodetic Survey Chart and by read-

ing of the Patent Log, which we streamed to measure this distance accurately.

"After the barges had dumped their load we steamed right over the spot of actual dumping and made our reading of the Patent Log at that time. The material dumped consisted of garbage and offal.

"This information is absolutely correct and can be wholly depended upon.

[1374] "Yours very respectfully,

"Lewis Compton."

Then Mr. Olmsted, the Supervisor of New York Harbor, sent me a letter giving me copies of the form of permit, and some other correspondence which he had.

This (indicating) is one from Dr. Copeland, who was Health Commissioner of New York, dated August 8, 1918, to J. T. Smith, Supervisor of the Harbor:

"I am informed by the Commissioner of Street Cleaning that the garbage plant on Staten Island has been closed for the past two days, and that the firm is unable to procure the services of a tug to remove the accumulation of garbage from our various dumps in the Boroughs of Manhattan, the Bronx and Brooklyn. You can readily believe that this is a very serious situation, and we hope it will not long continue. We are now in the midst of negotiations with the Federal Government to take over the garbage plant because of the large amount of glycerine produced there, and of importance to the United States and our Allies.

"The only present method we have of getting rid of the garbage is to dump it at sea. The City has bought some bottom dumpers and is prepared to make this temporary disposition of the garbage. In order to protect the health of the citizens of this City, it is absolutely essential to get rid of the garbage and without delay. I trust this will meet [1375] with your approval, but I want you to understand that we do not contemplate any permanent use of so inadequate

For Plaintiff—Hon George S. Silzer, direct.

a system. It is simply a temporary expedient to bridge over an emergency.

"Respectfully,
"(Sgd.) R. S. Copeland
"Commissioner"

This is a letter from Mr. A. B. MacStay, Commissioner of the Street Cleaning Department of the City of New York, dated August 17, 1918.

(Reading.) "The new garbage reduction plant of the Metropolitan By-Product Company is unable to handle all the garbage that is collected at this time of the year.

"I would like to get permission to send the surplus material to sea in dumpers, until the plant on Staten Island will be able to dispose of it all as it has been doing until recently.

"I know of no other method to dispose of this garbage and, as it is a matter of public health, there should be no delay in the removing of this material from the city.

"I, therefore, urgently request that a temporary permit be granted for the dumping of the said material at sea until about the 15th of September.

"Yours truly,
"A. B. MacStay
"Commissioner."

[1376] This is a letter from Mr. Kohler, Secretary of the Department of Health, New York City. That is not Bird S. Kohler.

(Reading:) "The City of New York is faced with an acute situation approximating a public nuisance in relation to its garbage disposal.

"The garbage disposal plant at Lake's Island, Staten Island, has ceased to take the garbage of the city. Under the condition of the municipality, through its Department of Street Cleaning, is compelled to assume responsibility for the disposal of this garbage, and has but one method at its command for disposal—dumping at sea.

For Plaintiff—Hon. George S. Silzer, direct.

"The City of New York is now in the throes of a so-called 'influenza' epidemic. We feel that no effort should be spared in combating this epidemic. Further we feel assured that any effort possible on your part will assist us in our present emergency.

"May we request you, therefore, to grant permission to the Department of Street Cleaning, City of New York, to take scows of garbage to sea and dump same under your supervision and regulation until such time, in the near future, when the City of New York shall be able to make other provision for the disposal of this garbage?

[1377] "We thank you for your consideration in this matter and trust that you may find it possible to assist the City of New York in this emergency.

"Very truly yours,
"(Sgd.) Chas. L. Kohler
"Secretary"

The date is October 5, 1918.

This is another letter from Mr. A. B. MacStay, Commissioner, dated December 9, 1918, to the Supervisor of the Harbor of New York. (Reading):

"I am in receipt of your letter of December 6, 1918, regarding dumpers #1 and #5 going to sea on the morning of November 30th, loaded with ashes, sweepings and garbage.

"I would say that these dumpers did contain more or less garbage as the New York Sanitary Utilization Company failed to furnish deck scows at several of the dumps and in order to prevent the garbage from being left in the streets, it was decided to dump some of it into the dumpers that were receiving ashes. This will occur only in cases of emergency.

"The New York Sanitary Utilization Company is repairing a well and has informed us that when this work is completed, [1378] it will be able to handle all the garbage collected. The Cahill Towing Line was acting in good faith, having received the order to tow ashes and sweepings.

"At the present time there is great difficulty in disposing of the refuse. The unloading plants are

For Plaintiff—Hon. George S. Silzer, direct.

constantly breaking down and four of the dumpers are now at dry docks for repairs, owing to the high winds of late, the dumpers did not go to sea. There are 70 loaded deck scows now moored about the water front, waiting to be unloaded.

"I would ask that this department be allowed to dump this mixed material at the dumping point for ashes and sweepings until there is some relief. Going out to sea a greater distance would cause still more delays.

"The continuing of the Dailey & Ivins abandoned contract will end January 1, 1919. Bids were recently advertised for another contract to begin January 2, 1919, but none were received and the City will be compelled to do the work. It is hoped that more efficient apparatus and methods will be used. I trust that you will permit the above, and oblige

"Yours truly,
"A. B. MacStay
"Commissioner"

This is a letter dated December 18, 1918, to Mayor Hylan from James T. Smith, Supervisor. [1379] This is a copy. This came from the Supervisor. He sent the documents to me.

"I have to acknowledge receipt of your letter of the 7th instant in reply to two letters from this office of the 6th, but am unable to determine from the language of your reply whether your communication refers to the maintenance by the City of scows located in the harbor for the reception of ashes from small steam craft, or the deposit of garbage at sea. Nevertheless, in view of your statement, 'If there is any more trouble, I wish you will let me know without delay and I will be glad to render every possible assistance to the end that you suggest,' I again take the liberty of addressing you on this most important subject of the deposit of the city's garbage at the mouth of the harbor.

"In the summer of 1906, owing to a breakdown of the plant at Barren Island, the city applied to this office for permits for the deposit of garbage at sea,

and permits were accordingly issued for the deposit of that material at a point three miles southeast of Scotland Lightship, which however met with a great deal of opposition and complaint from the residents along the New Jersey shore. The entire matter was referred to [1380] the War Department and a decision arrived at after a consultation with the Department of Street Cleaning that the Supervisor designate a point 15 miles southeast of Scotland Lightship for the deposit of such material. The Department of Street Cleaning anchored a schooner at that point and the deposits were made there until the Barren Island was again in operation.

"The Department of Street Cleaning it now appears is in extreme difficulties under similar conditions to those existing at the period just above referred to, and has requested that this office should so far modify its present rulings that the deposit of ashes and sweepings mixed with garbage, and of garbage alone, may be deposited at a point four miles southeast of Scotland Lightship.

"In view of the experience above stated, I feel that I should not be called upon to jeopardize the health of the residents and sanitary condition of the beaches along Long Island and New Jersey coast by a modification of the conditions as to the deposit of such offensive material as at present in operation, unless it can be fully presented to me that such action is absolutely necessary to protect the health of the City of New York and to prevent disaster to vessels such as at present employed in the transportation of that material proceeding so far eastward under conditions of weather which are liable to prevail during winter months.

[1381] "As I have already stated to you in my previous communication the deposit of this material at the mouth of the harbor is most objectionable from every point of view, and I trust the matter will receive prompt consideration, in order that the movement and final disposition of the present loaded garbage scows may be facilitated, as I shall delay further action on the request of the Commissioner of the De-

For Plaintiff—Hon. George S. Silzer, direct.

partment of Street Cleaning as above referred to until receipt of your reply to this communication.

"Very respectfully,
"Jas. T. Smith
"Commodore, U. S. Navy, Ret., Supervisor"

The date of that letter is December 18, 1918.

The next is a letter from Mr. Olmsted, Supervisor of New York Harbor, addressed to me. I had told him that there was a new application by the City of New York within a couple of years, and he says that that is not so. Then he continues:

"The tracing of a chart which you enclosed is returned herewith. I have noted on it the location of the garbage dumping grounds. New York refuse is not dumped at sea but garbage is taken to the location indicated."

[1382] I think it is shown on this map (indicating). That is the dumping ground that he marked (indicating) on map, part of exhibit. (Discussion of counsel.) The next is dated May 14, 1924. This is from Mr. Price, saying he enclosed a copy of his investigation. Mr. Price was the director of the State Department of Health [1383] of the State of New Jersey. (Objection. Overruled. Exception.) This is from the report which Mr. Price enclosed:

"An investigation of the recent garbage nuisance along the North Jersey sea coast from Deal to Belmar was made on the above dates. Officials were interviewed in Bradley Beach, Avon and Belmar in regard to the nuisance and they all expressed the opinion that the condition is as bad, if not worse, than that which occurred last year.

"Rain storms accompanied by heavy winds, exceptionally high tides and a heavy surf had prevailed for 4 or 5 days pre- [1384] ceding the time of this visit. The wind had maintained a general direction from the east but had varied from northeast to southeast, mostly the former. During these weather conditions large quantities of garbage were cast up on the beach.

The beach fronts of practically all the municipalities from Deal to Belmar were visited and it was found that in general, the amount of garbage was equally distributed along the entire distance. There were, of course, certain sections where currents were produced by bulkheads and jetties in which the accumulation was greater than the average.

"The material cast up on the beach consisted principally of grapefruit and oranges. Most of the grapefruit had been cut in half and a portion or all of the eatable part removed. In addition there were onions, apples, cabbage, banana stalks, numerous empty bottles, tin cans, boxes, newspapers, rags, etc.

"It was stated by one of the men interviewed that the condition had been worse than that found by the writers but that the wind and tide conditions of the day preceding the investigation had caused a removal of a large portion of the garbage by the ocean. A heavy undercurrent had occurred at this time and it is supposed that a large amount of material was removed by this current. It is believed that some of the municipalities are hoping that similar conditions will remove more of the garbage and will thereby reduce the amount that [1385] will have to be removed by carting away.

"It is obvious however that most of this material has been cast up beyond the normal high water mark and that manual removal of the material will be necessary in the near future. This will cause a great expense to the shore municipalities and it will have to be done very soon because objectionable odors are already being given off by the material and flies are feeding on the material in increasingly large quantities.

"Pictures of sections of the beach were taken and will be attached to a supplement to this report as soon as they have been developed and printed."

On May 23rd, Dr. Price writes me again as follows:

"Enclosed I send you report of further investigation concerning garbage and refuse along the Atlantic seacoast in our State. I am transmitting to you with

this report packages of refuse forwarded to this Department."

I did not get them, however. This is the report that was inclosed in that letter; it was dated May 22, 1924:

"Following the beach inspection of May 12-13, another inspection was made on May 15th, in connection with other shore work. Conditions were found about the same except that a change of wind had assisted in altering the shore currents so that some of the garbage was washed off shore again. The garbage under the boardwalks was rapidly disintegrating and giving off very perceptible odors.

[1386] "There is no doubt but that this was New York garbage rather than steamship refuse. In the first place the quantity was such that in jetty corners and other places the accumulation was nearly two feet deep and the drift covered the entire stretch from Long Branch to Spring Lake, indicating that enormous amounts had been dumped at sea. Search of the garbage at Belmar revealed the presence of Borden's (pasteurized at Canaan, Connecticut), Sheffield Farms and Homer Milk bottle caps, a souvenir rubber ball from a New York shoe store, New York papers, and small tins (cocoa, milk and vegetable) evidently household size.

"The authorities of Spring Lake, Asbury Park and Allenhurst promised to co-operate with this Department in reporting new drifts and in identifying the source. Packages containing New York City billheads, telegrams, etc., were later received from both Allenhurst and Spring Lake and accompany this report.

"In an interview with Mr. Thomas Proctor, a Long Branch contractor, who has specialized in beach construction work for years, the statement was made that the garbage drift was probably due to one of two causes, the five day northeast winds preceding the accumulation, or dumping inside the prescribed offshore limits. He stated that of his own knowledge that scows are frequently dumped 12 miles or less from land."

For Plaintiff—Hon. George S. Silzer, direct.

This was accompanied by [1387] four photographs.

The next letter that I have is dated May 29th. It is from Commissioner Taylor of New York, dated May 29, 1924. (Reading):

"Replying to yours of May 26th, concerning littering of the beaches of Long Island and New Jersey, I beg to advise that this Department is complying strictly with the rules and regulations of the Supervisor of New York Harbor, Captain J. C. Fremont, United States Navy, who assigns a man with each one of the Department's cargoes to insure that the garbage is dumped at the designated point, which is 15 miles southeast of Scotland Light, and about 17 miles from the nearest point of the New Jersey shore.

"A study of the tides made by the Supervisor last year discloses the fact that each tide travels six miles in each direction, at the rate of two miles an hour. When it changes from the flood to the ebb tide, or vice versa, as the case may be, the nearest point of approach that any of the floating material deposited at the dumping place could arrive at would be five miles off the shore, when it would be met by the outgoing tide.

"Notwithstanding the precautions taken in the past, the [1388] Supervisor of the Harbor has arranged that the designated point will be four miles further out to sea, or nineteen miles southeast of Scotland Light. There can be no question about whether the tugs take the scows to the points designated by the Supervisor, are absolutely under Government control, from the time they leave the local dumping docks in New York City. The Supervisor has patrol boats constantly patrolling up and down the line of travel, in addition to the Department boats that meet the scows at the light ship, and catch their loads, both out and in, to make sure that each vessel carries the proper class of material.

"The Department has constructed and in operation since last season one 300-ton unit for the disposition of light refuse and garbage in Manhattan, and one 100-ton unit in Brooklyn, with two more under construction, one 300-ton unit and another 100-ton unit.

For Plaintiff—Hon. George S. Silzer, direct.

Sites have been selected for five additional units, and the money has been authorized for the construction of same. Plans and specifications are being drawn for these, and everything possible is being done to handle the disposition of garbage and rubbish at these plants. However, this will consume some little time, and in the meantime every precaution will be taken to see that the beaches are kept free from any refuse so far as this Department is concerned, in having the scows dispose of their cargoes nineteen miles southeast of the Scotland Lightship.

[1389] "You can rest assured that we are all keenly interested in the question of keeping the beaches free from litter, and everything possible will be done to accomplish that object."

I have next a letter dated May 31, 1924, from J. C. Fremont, Supervisor of New York Harbor, which reads:

"I beg to acknowledge receipt of your letter of May 26th relative to garbage and refuse on the northern New Jersey coast purported to originate from the dumping of such material by scows from the City of New York.

"You state that you were informed last summer that there had been no permit issued for two years, permitting the dumping of garbage at sea. Such information could never have emanated from this office, as since 1918 a certain amount of New York City garbage has been going regularly to sea each day, and deposited at a point not less than fifteen (15) nautical miles to the eastward of Scotland Light Vessel.

"Since 1920, each garbage tow has been accompanied by an Inspector from this office who authorizes the captain of the towing vessel when he is permitted to discharge the dumpers. To further insure that this refuse will not find its way shore, I have completed arrangements with the Commissioner of Street Cleaning, New York City, that on and after June 1, 1924, the point of deposit will not be less than nineteen (19) nautical miles southeast by east (magnetic) of Scotland Lightship, which is the farthest point at sea to which the tows can [1390] go with safety. This posi-

For Plaintiff—Hon. George S. Silzer, direct.

tion is 20 miles east of the nearest point on the Jersey coast, and any floating refuse to reach that point would have to cross at least two tides. Further inspection of these tows in transit is maintained by the patrol vessels of this office until they have passed well out to sea.

"I desire to invite your attention to the fact that the great commercial shipping traffic in and out of New York Harbor is unquestionably a contributory cause to the nuisance of which you speak. The National Government cannot control vessels on the high seas, but in view of the unsatisfactory condition of the beaches which occurs at times, particularly during the summer; I have requested all the shipping companies that operate in and out of New York Harbor, to refrain from discharging refuse overboard within twenty-five (25) miles of Ambrose Channel Lightship, and I have been assured by a number of managers of these companies, that they will see to it that this is carried out.

"On the 25th of April, 1923, I made a personal inspection of the beaches on the northern New Jersey coast from Highland Beach to Asbury Park accompanied by certain citizens of New Jersey, with the particular purpose of noting the conditions along the shore before the great summer population had arrived. I was extremely gratified to note that there was absolutely no evidence of garbage, refuse or oil on that stretch of coastline on that date.

[1391] "I can assure you that the seriousness of the conditions of which you speak, is well appreciated by this office, and that unremitting efforts are, and will be continued to be made, to preclude any possibility of quantities of refuse from New York City scows reaching the Jersey beaches."

Fremont wrote that letter. He was Supervisor of the Port of New York when he wrote the letter. The date was May 31, 1924.

I then wrote a letter to Captain Fremont, which is dated June 3, 1924:

"I have your letter of May 31st, relative to garbage and refuse on the North Jersey coast. I am sending

you herewith a copy of a letter from A. A. Taylor, Commissioner of Street Cleaning of the City of New York, from which you will see that the Street Cleaning Department of New York claims that it is dumping its garbage in accordance with orders from your office and under your inspection.

"The obvious conclusion which they draw is that if, after having complied with your regulations, garbage is washed up on the shores of New Jersey and Long Island, it is no fault of theirs, but that it must be due to the inadequacy of the regu- [1392] lations.

"Taking up seriatim the matters referred to in your letter, would say:

"1. With reference to permits issued, I have before me a letter of Captain P. M. Olmstead, former Supervisor of New York Harbor, dated September 27, 1923, file A-262, in which he says:

" 'There has been no application in the past couple of years by the City of New York for dumping garbage at sea. The permit issued several years ago as a temporary permit on account of the reduction plants being out of commission, has been continued, as there was no other place for the disposal of garbage, and the health of the city made it imperative that garbage should be removed.'

"This was also corroborated by a letter from the Secretary of War, written to me at about the same time.

"In this connection, might it not be worth while to consider the question whether New York City, in the last six years, has made the necessary efforts to provide itself with disposal plants; and whether pressure from your department would not expedite this matter, so vital to the health of the city and important to the War Department from a navigation standpoint.

"2. You state that where the garbage is dumped it would have to cross at least two tides to reach the shore. If the theory is correct, then there must be something wrong in its [1393] execution. Either the theory is wrong or the execution is wrong, when our coast is littered with garbage and refuse.

"If the theory is right—that garbage dumped in this place will not wash ashore, then it must follow

that the inspection of your department is not effective and that the regulations are being disobeyed. I may say, in this connection, that I found them disobeyed last year. Our observers saw garbage being dumped five miles from our shore. Perhaps it may be necessary to watch the watchers, or change them for others who are more observant. At least, this seems to be the logic of the situation. I trust that your department will be good enough to check up, either on the theory or the practice, or both, so that the nuisance may be abated. After our check-up of last year it was abated.

"3. I have no doubt that the commercial shipping in and out of New York does discharge much that is offensive, but in our check-up of the recent garbage that was thrown upon our shores we have, I think indisputable proof that it came from the City of New York.

"I am delighted with your action in getting in touch with the shipping companies and asking their co-operation.

"4. I note your visit of April 25, 1923, at which time there was no refuse on the beach. I can quite understand that. It was probably at a time when weather conditions were favorable, and when the boats were complying with your regulations.

[1394] "It has occurred to me that perhaps conditions are intensified either during or immediately following a heavy storm, at which time, perhaps, the garbage would wash in shore. You would, however, know better about that. If that is true, then might we not regulate the scows so that they would not dump at that particular time?

"Assuring you of the thorough appreciation of the people of this State of your efforts to help keep our shore free from this nuisance, I am,

"Sincerely yours."

On August 29, 1924, there was a letter from Frederic P. Reichley, Borough Clerk of Bradley Beach, in which he enclosed some photographs. These (indicating) are the photographs attached.

For Plaintiff—Hon. George S. Silzer, direct.

The letter from my secretary to Mr. Nicholson, Corporation Counsel of the City of New York, dated September 30, 1924, which reads:

"My dear Mr. Nicholson:

"Having in mind the statements which you publicly made at the meeting of the National Coast Anti-Pollution League at Asbury Park last summer, I desire to call your attention to the enclosures."

[1395] "I desire to call your attention to the enclosures, being a copy of the telegram recently sent by me, at the direction of the Governor, to the Supervisor of the Harbor of New York, and the reply of the Supervisor.

"If I recall your statement correctly, when you asked me for my definition of 'refuse' I described articles similar to those mentioned in the telegram enclosed, such as boxes, wood, bottles, and things of a similar nature, and you then stated that nothing of this kind was loaded upon scows by the City of New York and dumped at sea.

"The letter of the Supervisor would seem to contradict your statement and to prove conclusively that refuse of this kind was dumped at sea, as well as garbage. Perhaps, you, yourself, have been misinformed, and I thought you would be interested in having this information, because of course the Governor feels sure that the New York City authorities will endeavor to do all in their power to prevent the pollution of our shores."

This is the reply from Mr. Nicholson, dated October 21, 1924:

"Receipt is acknowledged of your letter, enclosing copies of telegrams exchanged by you and the Supervisor of the Port with reference to driftwood on the shores of New Jersey.

[1396] "It is true that garbage dumper 'E' was caused to discharge its load on the way back from the dumping grounds, as stated in the telegram of the Supervisor. This was due to the mechanism failing to work.

For Plaintiff—Hon. George S. Silzer, direct.

"A survey was made of the beaches, especially that of Asbury Park, between the 27th and 30th of September. Inquiry along the beach showed that it had not been cleaned in two weeks, evidently due to the fact that the summer season had passed, and of course there was a considerable quantity of driftwood there.

"If it were possible for any small particles of wood to be mixed with the garbage, such quantity would be negligible.

"As you know, a gale commenced to blow about September 26th and continued through the 30th, the wind being eastwardly for a period of four days, then shifting to the southeast, the velocity of which reached as high as sixty miles per hour at times.

"In no way can I conceive that the great quantity of driftwood observed on your beaches could be charged against the dumping of the Street Cleaning Department of this city. It may have been possible for some of the refuse dumped from dumper 'E,' on account of the accident to the mechanism, to have reached the beaches in the exceptional weather mentioned, but I feel satisfied that eighty per cent. of the refuse on the beaches came from other sources, as our garbage cargoes could [1397] not go to sea after the storm once started. As a matter of fact, an examination of the driftwood showed timber and Bacardi rum cases, which are not carried on department scows.

"We are doing everything possible to expedite the comprehensive program for the construction of incinerators. Within the next two or three weeks we will advertise for bids for the construction of two additional incinerators having a capacity of 350 tons daily. Within the next four months we will advertise for bids for the construction of two more with a capacity of 750 tons, so that within the next year it will be possible for us to dispose of 1500 additional tons of garbage daily in incinerators. As you no doubt are aware, at the present time we are disposing of 450 tons and with the two incinerators now actually in the course of construction, which will consume 450 tons more, we will be disposing (within the next year and a half) of about 2400 tons daily.

For Plaintiff—Hon. George S. Silzer, direct.

"In the Borough of Brooklyn there will be additional incinerators constructed, so that every possible means is being applied to eliminate entirely the disposition of garbage at sea.

"Your telegram and the answer thereto do not in the slightest degree show an inaccuracy in the statement before the meeting at Asbury Park during the summer.

"With kindest regards, I am,

"Very truly yours."

[1398] This is a letter of June 19, 1925, from myself to the Secretary of War, Mr. John W. Weeks:

"During the last few years the shores of Long Island and New Jersey have been frequently littered with the garbage of the City of New York. This has been towed out a short distance to sea and dumped there, frequently finding its lodging place upon these shores. This garbage has been a nuisance, a detriment to health, and, in many cases, has almost destroyed the beaches of both States for bathing purposes.

"Your department has supervision of New York Harbor and certain regulations have been adopted for the disposal of this garbage. In spite of these regulations, the nuisance is of frequent occurrence.

"In the interest of public health and the preservation of these beaches, which represent a very large investment in property and in health, may I respectfully suggest that action on your part in two particulars would be very beneficial to us, namely:

"1. That you direct that the scows carrying this garbage be taken out further to sea before being dumped; in fact, taken out far enough not to be returned by the tides.

"2. That you notify the City of New York that unless they finish their garbage disposal plants within a limited time, (which you can fix after seeing what they ought to do), you will withdraw the privilege of permitting the dumping at sea.

[1399] "3. The former will provide temporary relief; the latter, permanent.

For Plaintiff—Hon. George S. Silzer, direct.

"We wish to live at peace with our neighbors, and have no desire to interfere with other people's business, but only in this way will New York be forced to finish its incineration plants. Our information is that they could have been and should have been finished long before this time.

"It is an admitted fact that if garbage is dumped far enough at sea, the outgoing tides will prevent it from being dumped ashore. The very fact that it comes ashore is an indication that there has been a lack of watchfulness upon the part of those who supervise the dumping.

"I am sure that if your department will hold to stricter accountability those charged with this supervision, there will be less occasion for the people of Long Island and New Jersey to complain of your department's work in supervising the dumping of garbage.

"If you desire any further information on this subject, I shall be glad to furnish it to you. You will also be able, of course, to get what you want from Captain Fremont, the Supervisor of New York Harbor."

July 9, 1925, a letter from Acting Secretary Henning, in reply to that letter:

"Your letter of June 19, 1925, relative to the deposit of garbage at sea by the City of New York has been under consideration.

[1400] "The Supervisor of New York Harbor reports that the point of dumping has been, since its last extension, placed further seaward and is now 22 nautical miles from the nearest place on the New Jersey shore (Sea Bright) and 14 nautical miles from the nearest point on the New York shore (High Island Beach, L. I.). A deputy inspector from his office accompanies each garbage tow to sea and authorizes the discharge of the refuse when the assigned position is reached, submitting a full and detailed report of the voyage on his return. In addition, the patrol vessels inspect the tows en route in the lower harbor, and keep them under observation until they have passed well off-shore.

For Plaintiff—Hon. George S. Silzer, direct.

"Referring to your request that the dumping point be placed still farther out at sea, it appears that the scows must now be towed from 40 to 42 miles from their point of departure to the present dumping grounds, requiring from 24 to 26 hours to complete the round trip, depending on tidal and weather conditions, and, during the summer season when removal of garbage is at its peak and scows must be kept alongside the dumping boards to receive the daily collection, all available dumpers are in service. In addition, the unseaworthy character of the scows when loaded makes it unsafe to require them to proceed still further to sea where they would be placed in danger from sudden and violent storms. A further extension of the limits at this time might lead to the construction or [**1401**] purchase of more seaworthy scows and result in requests for an extension of the dumping privilege.

"The objectionable features of which you speak are appreciated, and I am urging the Mayor of the City of New York to use his influence in the matter of providing other means of garbage disposal.

"In this connection I would say, however, that there is reason to think that the city is not wholly to blame. Storms sometimes cause the premature dumping of scows at points where the material may possibly be washed ashore, and it is believed that there are other contributory causes of beach pollution, such, for example, as the throwing overboard of refuse by the great shipping traffic in and out of New York Harbor, and from the numerous small fishing craft that anchor off the coast in the vicinity of Sandy Hook over week ends.

"It should be said also, in behalf of the city, that considerable progress has been made in providing for disposal of its garbage otherwise. Three incinerating plants are in operation, a fourth is nearly completed, and plans and specifications have been drawn for three additional plants.

"You will appreciate the fact that a very large and expensive inspection force would be necessary to prevent deposits of garbage from all vessels navigating in and about New York Harbor, but I may assure you that it is the purpose of the Department to have

the practice terminated at the [1402] earliest practicable date. The Supervisor is expected to keep in close touch with the matter, and with the progress being made by the city in carrying out its garbage disposal program."

The last letter I have is dated July 22, 1925, to the Secretary of War from myself:

"I have already acknowledged your letter of July 9th concerning the action taken by your department with reference to the dumping of garbage at sea by the Street Department of the City of New York.

"I desire to add to my formal acknowledgment of your letter my personal appreciation, and that of the people of New Jersey and New York, for your prompt and effective action. I am sure that your direction to the Mayor of New York to proceed with the construction of incinerators will have its effect, but of course it must be followed up from time to time to see whether the City of New York is complying with your directions or not; otherwise, the nuisance will be prolonged beyond the time necessary for the finishing of the incinerators.

"Since this will take some time, we also deem it essential that the strictest kind of supervision be had between now and the time when the dumping of garbage ceases. Only in this way will we be relieved of the nuisance. Personally, I do not believe that the supervision has been all that it should be, and would respectfully suggest that when violations take place, if a change in personnel is made, the offense will not be repeated.

[1403] "I also want to call your attention to the editorial comment of the press of New York City itself, all of which has been favorable to the steps which you have taken. Coming, as it does, from the city against which complaint is made, it evidences, more than otherwise, that the department's action has been popular.

"Knowing that you want all information possible on the subject, I am taking up in detail some of the things that were mentioned in your letter of July 9th.

"I know that deputy inspectors from the Super-

visor's office accompany each tow to sea; but that is not sufficient. It is also necessary that the inspector perform his duty, but it frequently happens that the inspector does not do so, with the result that the garbage is dumped before it reaches its destination. When this happens, the garbage comes up on the shore and creates a nuisance at that point. In such cases the inspector and supervisor should be held to strict accountability, because it means so much to the health of the communities.

"You also suggest that more supervisors are necessary. If this be so, then there is no reason why the City of New York should not provide the funds necessary to pay them. If New York wants this privilege from the Secretary of War, the Secretary can grant it upon condition that New York pays the expense of the additional supervision required.

[1404] "It is no doubt true that sometimes, during a storm, scows are prematurely dumped. In such cases (a storm being anticipated), the scows should not be sent to sea. I appreciate that at times accidents will happen.

"I cannot agree with the Supervisor's contention that a large part of the garbage comes from shipping traffic in and out of New York Harbor, and from the fishing craft. This would be infinitesimal, as the New York papers have pointed out. Besides that, this shipping traffic and the fishing craft do not throw overboard numerous dead cats and dogs, quantities of electric light bulbs, and garbage not usually found on board ships. I am sure that, through your initiative, you could secure the cooperation of the great steamship lines, and have them dump their garbage further out at sea.

"Again expressing my sincere appreciation of your prompt and effective action, and assuring you of my willingness to cooperate with you at any and all times in this matter, I am,

"Yours very truly."

This file contains additional correspondence and communications which I had with other persons during my term of office, with respect to the garbage on the beach.

[1405] During that time I was trying to get information wherever I could. I got some of it personally when I was down at Sea Girt during the summer. I had complaints during my term every summer from people along the shore. I do not think the effect of this garbage upon the development of the State has been beneficial. There has been a great deal of fault found about bathing and other facilities, and my impression is that they were simply staying away on account of the conditions.

This emergency that arose so suddenly in 1918, so far as the effect of garbage along the shore is concerned, has not abated in the last ten years. I think it has gotten larger. [1407] (Discussion of counsel report of Governor Silzer.) (The documents referred to were received in evidence, and a photostatic copy thereof was marked "Complainant's Exhibit No. 298.")

The Special Master. One other thought, Mr. Crowe. I overruled one point in the testimony of Mr. Price. I think his testimony is perfectly competent, but there are conclusions and opinions in it that I do not think are competent.

[1408] HON. A. HARRY MOORE. On *direct examination.* I live in Jersey City. During the years, calendar years, 1926, 1927 and 1928, I was the Governor of New Jersey.

This question of beach pollution and garbage was brought to my attention during my term of office quite frequently.

It was a general complaint along the shore. I have from time to time received letters and communications and delegations, complaining of the condition, the garbage condition on the shore. On June 23, 1926, I received a complaint from the Borough of Sea Girt. [1409] And June 29th I wrote a letter of complaint to the Secretary of War and the Supervisor of the Port of New York.

July 1st I received a letter from Captain Bennett, Supervisor of the Port of New York, discussing the gar-

bage dumping situation, and stating that the only final solution of the problem was the erection of suitable incinerators to handle New York City garbage, so that none of it was dumped anywhere at sea, and also stating that constant pressure was being brought to bear on New York. I have that letter here. It is dated July 1, 1926. (The letters referred to were received in evidence, as one exhibit, and marked "Complainant's Exhibit No. 299.")

Mr. Minard. At this juncture, I want to present to the Master, Captain Bennett's report to the Chief of Engineers, [1410] in the year 1927, which is made a part of the Secretary of War's report to Congress for that year. This is October 4, 1927, and is one of the regularly published sections of the "Annual Report of the Chief of Engineers." That is a document which the United States Supreme Court has repeatedly held to be an official document of which it takes judicial notice. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 300.")

Mr. Minard. In connection with his statement that the only solution of this problem is incinerators, I want to call attention at this juncture to this remark of Captain Bennett, printed on page 1915 of the Annual Report of the Chief of Engineers for 1927.

> "Experience indicates that garbage dumped at sea, no matter at what distance from shore, is liable to wash up on the beaches."

That is Captain Bennett's statement, along with that letter.

[1411] The Witness. On July 10, 1926, I received a letter from the Secretary of War, stating that his Department had called the attention of the Mayor of the City of New York to the objectionable features of dumping of garbage at sea and the importance of the early completion of incinerators.

For Plaintiff—Hon. A. Harry Moore, direct.

August 9, 1926, I received a complaint from the Ocean Grove Camp Meeting Association, containing reports of the garbage on the beach.

June 22, 1927, I wrote to Senator Edge asking him to take up with the War Department the question of garbage on the New Jersey beaches.

June 22, 1927, I wrote to Mayor Walker, of New York City, complaining about the garbage on the beaches.

June 22, I wrote to the Secretary of War again, complaining about the garbage on the beaches, and on the same day wrote to Captain Bennett, Supervisor of the Port.

June 23, 1927, I received a letter from Captain Bennett, Supervisor of the Port, explaining the regulations of dumping garbage at sea, and explaining that New York had promised to provide incinerators to dispose of all garbage.

June 23, 1927, I received a letter from the Borough of Sea Girt, complaining about the garbage on the beaches.

June 27, 1927, I received a letter from the Secretary to [**1412**] Mayor Walker of New York City, stating that the Mayor had sent my letter to the Commissioner of the Street Cleaning Department for attention.

June 27, 1927, I received a letter from General Deakyne, Acting Chief of Engineers of the War Department, promising an investigation for the purpose of imposing more rigid regulations for garbage dumping.

June 30, 1927, I instructed the Attorney-General of New Jersey to investigate and advise all legal means to prevent the dumping of garbage at sea.

July 18, 1927, I received a letter from F. Trubee Davison, Acting Secretary of War, advising that the Federal regulations for dumping of garbage confined merely to questions of navigation, and that the War Department was not authorized to control the discharge of refuse matter which did not interfere with navigation,

and stating that they were trying to prevent the garbage dumping by New York City from reaching the beaches.

He called attention to the fact that the City of New York was engaged in the program of constructing incinerators and for the complete abandonment of dumping garbage at sea. He stated that the War Department had communicated several times with the Mayor of New York, urging early completion of this program, and that the War Department had done everything it could to improve the situation, but would again call the matter to the attention of the New York authorities.

[1413] December 5, 1927, I received a complaint as to garbage on the beach at Seaside Park from William B. Kline, of 245 Windsor Place, Brooklyn, New York.

Mr. Minard. We will treat all that group of letters in the same manner—all these letters submitted by Governor Moore will be included in Exhibit 299.

During my term, meetings, or committees, or conventions, or other activities along the shore regarding this subject were frequently held.

There was an Anti-Pollution League formed here. I attended some of those meetings. This garbage nuisance, I should say, has not done us any good. I cannot indicate the harm of it, except as it is obvious. It is difficult for a patriotic New Jersey man to say it has ruined our community entirely. I will not go so far as that.

[1414] PERCY N. DANIELS. On *direct examination.* I live at Trenton, New Jersey. I am a sanitary engineer. I do consulting work, and also act as Sanitary Engineer for the City of Trenton. I was, in 1924, connected with the State Department of Health as Senior Sanitary Engineer. I made the investigation referred to in Dr. Price's letter to Governor Silzer in company with others. I had charge of the investigation. [1415] I made the report of May 22, 1924. The previous report was signed by two men who were working with me. The inspection

was made under my supervision. I was familiar with the contents of that report, and was at the time familiar with the facts. I was also familiar with the facts contained—that is, within my own knowledge—with the facts contained in the report of May 22, 1924. The photographs that were in there, that we have seen, attached to the report of May 22, were made by me, as I recall. I think the report was written May 22. The inspection was on May 15. [1416] And here is another, on May 12 and 13.

On *cross examination.* My investigation was confined to the conditions I found on the beach. These materials shown in these photographs, annexed to my report, were on the beach at the time I took the pictures of these materials. I never made any investigation at sea.

[1417] VICTOR GELINEAU. On *direct examination.* I live in Tenafly, New Jersey. I am director and chief engineer of the New Jersey State Board of Commerce & Navigation. It is a consolidation of five different departments. It was effected in 1915. It carries out the coast protection work, in which the State is very active. It sells and leases title and interests in lands under water; builds various canals, and improves the channels. It supervises the con- [1418] struction of all piers, bridges, and other works on tidal and navigable waters, and has certain duties in connection with the Ship Canal Project. This is a department of the State of New Jersey. I was requested by the Governor to make an investigation of the garbage conditions on the beaches. The board operates a boat, and that boat was sent out to make investigations. I personally did not go on any of those trips. The garbage conditions on the beach is something that recurs commonly. Every year there is a series of complaints. As far as our supervision is directly concerned, it is not of so much direct importance,

because it does not affect the construction of the works. We feel that it does, to a certain extent, operate detrimentally on the value of the riparian rights, [1419] which the State owns, and others which the State has sold to the value of millions of dollars. There are some riparian rights which the State has leased, but not parted with the title of.

When these instructions came to me, I did only as Governors Silzer and Moore have testified today. Really those investigations were largely conducted under the orders of the Governors, directly under their supervision. Our boat made investigations. For a time, Captain Conover operated that boat, but subsequently, Captain Falkenburg, both of whom are here today. Reports in general were made direct to the Governor. My observation is that garbage pollution is increasing, and certain- [1420] ly the complaint is increasing each year. I try to make a personal inspection at least twice a month on the coast, from Sandy Hook to Cape May, primarily, because of our contributions on the building of these jetties and sea-walls, some of which you see out there (pointing to the ocean).

I have furnished the Attorney General's office with a statement of the State's contribution in this particular zone during the last few years. I make these personal inspections and take photographs and make minute surveys. We have a regular corps making surveys all the time, to test the operation of these various devices. They are building one out here, you know, on this jetty (indicating). In the course of those inspections, I have almost always seen the garbage. I have not been out to see where the scows dump [1421] personally. I have seen it on the sea, floating offshore. I have seen it right in the surf, and, of course, the windrows on the shore. I have seen it only in spots floating on the surface of the ocean. I have seen it working in on the northeast winds pretty extensively, but only as far as I could

see readily. When this garbage is on the shore it is extremely offensive to almost every sense. You step in it; it smells; and, of course, it is objectionable to the eye.

On *cross examination.* I have had the shores of the New Jersey coast under observation for 18 years; in the State employ 18 years. [1422] During the whole of that period garbage has been on the beach intermittently. Very strong northeast winds will bring garbage. Westerly winds would not. When the wind is from the west it does not come in on the New Jersey shore.

THOMAS A. MATHIS. On *direct examination.* I live in Toms River, New Jersey. I am the State Senator from Ocean County. [1423] I have been such about 12 years. The portion of the New Jersey coast embraced in our county is from Manasquan River, to Little Lake Harbor Inlet. The beach shore resorts in that area are Point Pleasant, Bay Head, Mantoloking, Lavalette, Seaside Heights, Seaside Park, Barnegat City, Surf City; Ship Bottom Beach, Arlington; Beach Haven. That covers most of them.

I have lived in the county about 25 years. I come in contact with the beaches and the shore very frequently, in the summertime especially. I have seen a lot of the garbage on the beaches. I have seen our beaches literally covered with the [1424] garbage, such as grapefruit skins, oranges, decayed vegetables of all kinds, or, in other words, similar to those things that in my sea-faring days I saw dumped from the scows that were towed out of New York Harbor. I was a captain about 25 years, running in and out of New York. I still possess a navigator's license for the waters of any ocean of the world and any ship. I was on sailing ships, steamships and private yachts. I have seen many times the scows towed out of Sandy Hook and dumped. And I have seen the material floating on the surface of the water. [1425] The

longer the interval from the time it is dumped, the more it will spread out. When it is first dumped, it is quite a solid mass. But it immediately spreads out, and keeps on spreading out, until it gets thinner and covers more of the surface. It has been quite a long time since I was up around Sandy Hook. I was master of a ship. It has been 14 years since I saw the scows dump at sea. I have observed the garbage on the beach within the last six months. The garbage that I found on the beaches within the last six months was of the same character that I used to see on those scows. At the time I was speaking of [1426] the place they dumped depended entirely on whether it was before dark or after dark. I have seen them dump after dark away inside of the Ambrose Lightship. I think they are supposed to go considerably beyond that. I do not know just how far they are supposed to go. This may not be a reflection on New York City, but the man who was in charge of its tow boat, tow barge, out there, in dark weather, after dark, is going to get clear of his load and get back to the harbor as quickly as possible. I have seen them years ago.

(Witness shown a map and asked to tell where the lanes of ocean travel are.) [1427] That would depend on where the ships were going. The smaller ships, coastwise ships, would come out of the South Channel, and come down close along the coast. That would be inside of these dumping grounds as indicated here (indicating on map). These trans-Atlantic liners would come out of the main ship channel, pass Ambrose Lightship and take an easterly course, which would be east of this line (indicating on map). The liners for Italy would come out of Ambrose Channel to the Ambrose Lightship; take their departure from the lightship, and go down the Atlantic Coast in an easterly course towards Long Lsland. That is true of the White Star Line. That is true of all the trans-Atlantic lines. With the Mediterranean Lines, the

time of year might make some difference. They might come down the coast a [1428] ways, and take the southern course. The time of year has very much to do with it. In the wintertime, the southern course is supposed to be better, because they strike nicer weather in the southern course, and in the summertime the hurricane season, in the southern latitudes, makes it more dangerous and, therefore, in the summertime, they take the more northern course. If they take this course—any course inside of these dumping grounds—it would be in the wintertime and not in the summer. The only lines of travel, within this marked dumping ground, would be coastal vessels. Those include the Ward Line and the Mallory Line, and the Savannah Line. There are a number of lines that go to Savannah and Jacksonville and New Orleans and Havana and all the different West Indian islands. Their voyages are from 24 hours to three or four days, to some [1429] of the West Indian islands. It depends on the speed of the ship and the journey. It is only a matter of a few days' journey.

The garbage at times makes bathing almost impossible, and as bathing is one of the particular pastimes of our resorts, when the bathing is affected, it affects the hotel business, the real estate business, and all business, in a general way. This has been a matter of recurrence for a number of years. The amount of garbage on the beaches has increased in the last few years. And I get a lot more complaints from my constituents in the different municipalities along the beach each year. I have not taken any official action, or attempted to take any official action, to correct this nuisance any more than to speak to our Governor and Attorney General, and talk over, in a general way, with members of the Senate, as to what would be the proper action to take to get the matter straightened out. [1430] The resolutions of the Legislature adopted on the subject are matters in which I participated.

For Plaintiff—Thomas A. Mathis, cross.

I have never personally identified any articles among the garbage that would indicate where they came from. I have had my constituents from the different municipalities say that they had picked up different cards or billheads or letterheads, or something of that character, that would indicate that the—I have observed the garbage in the sea between the dumping grounds and the shore to indicate that the garbage moved from the dumping grounds toward the shore. That depends entirely on the weather condition. [1431] (Discussion of counsel. Objection. Overruled.) I was about to say that, in a strong northeast wind, the garbage can get—or, in floating by, can get to traveling quite rapidly, probably four or five miles an hour; it is hard to say just what velocity. But the stronger the wind, the faster it will move toward the shore. Besides, if the wind is blowing in that same direction for several days in succession, it will have a current going along with it that will help it out, as well as the wind. [1432] The garbage would travel faster in a very strong wind. It will come with any easterly or northeast winds, from the direction of the dump, whether strong or not.

On *cross examination.* I would call a 25 or 30 velocity a strong wind. It is very lively at that velocity. I have never made any tests to see.

There is no basis for the opinion that I have expressed here; only from observation. There was no test as to the wind velocity [1433] at any given time of observation. The testimony I gave with regard to the lanes of the coastwise vessels, and the European and South European or the Mediterranean travel—is not only information of the course pursued by those vessels at the time I was at sea but since. I keep in pretty good touch with shipmasters and the shipping business. In the last 14 years, the coastal traffic in the steamships has increased. In sailing vessels, it has decreased. Those

are the vessels that I have described as making trips to points at a distance of from 24 hours to three days from New York. [1434] I think we would all presume that any West Indian trade or Florida trade or the southern trade would increase since the first of January, 1920.

RUNYON COLIE. On *direct examination.* I live in South Orange, New Jersey. I am an attorney—lawyer. My practice is in the City of Newark. [1435] I have a summer home at Mantoloking. I have been going there since about 1888 or 1890. I have had experience with the garbage down at Mantoloking. The beach has always had some driftwood on it, since I can remember, as a small child. It has somewhat increased, too, the proportion of garbage to driftwood has greatly increased, I should say, though I cannot be exactly accurate as to the beginning point; but that the period of the last ten years has been appreciably worse than the period of the preceding ten years. That I am certain of. My house—my father had a cottage on the ocean until the time that I built my house about five years ago. I used to live with him as a bachelor, and now I live in my own house.

Quite often, after any northeast blow of any strength, we have—well, our typical northeasters, as we call them, may be just a storm, or may be any steady blow that lasts three days; toward the second day of that, the stuff begins to come in, and we often go out to look at it on the beach, and those northeastern tides are higher than other tides, and it always [1436] leaves orange skins and grapefruit and the rest of it, and on the beach we often rake that up. Often we rake it in a pile and burn it. And sometimes we rake it to some point nearer to the sea, and let our neighbors get it again.

I have been thinking over the curious features of that garbage. The principal things are the skins of oranges

and grapefruit. Of late years, tremendous numbers of lamp bulbs, and some radio bulbs—they are there by the hundreds, on a hundred foot stretch of beach you can sometimes find 300 or 400. It is almost unbelievable, the number of incandescent lamp bulbs, and radio tubes, that we find. A good many broken dolls, with one leg on, and a great many nursing nipples; great quantities of the little black nipples off of bottles. This is mixed up with the driftwood, and an occasional dead animal.

That is only a very small percentage of it. I steer clear of anything, as far as I can, that I think is going to be such. There is a sort of a tallow substance that gets into the garbage now and then, but I have never make any attempt to analyze it. I usually bury it forthwith. There is an element of that garbage that is subject to putrefaction or decay, [1437] after a time, and that odor comes there. Last year, or this last summer, rather, I had an experience with the garbage that, to me, was unique. We had a strong northeast blow, a severe blow, the end of September, just before we left, and then three or four families of us all agreed that we would get down there the next Sunday.

And I have the only ocean cottage in the group. So we went to my place for lunch; when we got there—Mantoloking has not any jetties, but nevertheless the beach currents will form along the beach.

And this stuff was collected by those currents in front of my place, and literally it is a 100 foot frontage, up to the crest of the beach—almost to the crest, there was about six feet of beach that was visible, and then the stuff went back to the surf, but for a distance of 100 feet, almost more than 100 feet, the beach had become invisible; the beach where we were to have lunch had gone. We did not any of us measure it, to see whether it was ankle deep or knee deep. It had gone under this collection of stuff. And after a little while, there was this unpleasant—not tremendously strong—odor that

permeated it. And we went down to one of the bay cottages and had our picnic lunch down there.

And the local policeman went there and burned a lot of it, and the rest of it he buried.

[1438] We have an east or a little north of east wind with it. By that I mean east, as I understand it, is not at right angles, but east is a little bit to the left of a right angle, as you look to sea. So any wind that is not at all south of east, and particularly a northeast wind, will bring the garbage on if it blows in any intensity. In any wind that blows east or northeast, we get it. And I should think it came on so that you had to collect it up to get a clear beach ten to twelve times in the summer. It makes us employ a man to clear up the beach; sometimes two men, under our present program. To help out—I mean to say, we do most of it ourselves, because he does not get around. In my opinion, it undoubtedly does retard the development of the community, because it is the most offensive feature we have. It is a matter of common complaint in the community. [1439] As a matter of fact, I recall that, when we will get particular collections, we refer to—or I have heard people refer to their neighbors as the "Garbage King," when their front yard happened to be particularly covered with it, because this occurrence—we have a rather wide beach, and if the water comes over it, it will collect in the hollow, and that will drag all this stuff there and leave it, and the man's lot will be quite in the condition I described as to mine, that is, spoiled for use until somebody goes out there and gets rid of it. There is no place free of it. It is in little lines where the tide has stopped, the ends of the waves all along the beach. But in one place there will be this pool of it, if I make that clear.

I have never identified any names or addresses among this garbage. There is not anything about it to indicate where it came from except the facts I have stated; the electric light bulbs in such tremendous quantities and the

nursing nipples, and the rubber balls and the toy dolls. [1440] There is one thing that I would like to say. I think I can testify to it as personal experience. I have heard some statement about a two mile an hour tidal current along the New Jersey coast. Now, I have been out there a good many different times with small boats, rowboats, canoes, even, and bubble boats. And I have been out there, and I have swum out there, and I am certain, from my own knowledge, that if there is a 2 mile an hour tidal current, that does not in any sense mean what a human being would understand. There is no—after you get over from the Hudson River and the harbor there, except at the inlets, there is no appreciable current at sea. The tide rises and falls, but without any definite channels and currents, until you come to the outer bar. That is usually about a quarter of a mile, or a few hundred yards, offshore. There are currents through that; but out in the body of the ocean, this suggestion of a flow of 2 miles an hour in and 2 miles an hour out, I know is not so, because I have been out there in canoes.

I have not been out to where the barges dumped. I have seen the garbage in the sea before it [1441] reached the shore. The ocean is spotted after a northeaster with these things, which make bathing absolutely dangerous, I should say. There are times when we do not go in, because these pieces of logs or driftwood come in to the surf; that is picked up in a northeaster, and it is too dangerous to take a chance of being hit.

And you can see these bigger pieces at several hundred yards. You cannot see the garbage. I have never encountered the garbage on the sea when I have been out in my boats, because the time you go out to sea in a small boat is not the time right after a northeast storm. That is when the ocean is choppy and rough.

For Plaintiff—Walter Fetzer, direct.

WALTER FETZER. [1442] On *direct examination.* I live at Seaside Heights, New Jersey. I am the tax collector and treasurer of the Borough of Seaside Heights. I am in business for myself in the amusement business in the summertime in Seaside Heights. I have been Borough Treasurer and Tax Collector for six years. In the wintertime, our population is approximately—I can only furnish these approximate figures, because we have [1443] had no census taken—approximately, in the wintertime we run about a thousand. In the summer we have a normal rental population of in the neighborhood of 5,000 or 6,000. Saturdays and Sundays it will run considerably higher than that, probably, and has done so, particularly in the last year or two, or two or three years. Our community is a summer resort and it is a place where people come for amusement. They come to get into the ocean, or to go onto the beach. We have a bathing beach which is about 100 feet wide, covered with beautiful white sand. We have a boardwalk about 4,500 feet long; 4,000 feet. It is about 20 feet wide. We are now making preparations to spend another $25,000 on it. Our boardwalk has cost us up to the present time approximately $50,000. The taxable valuation of our community for 1929 runs close to a million [1444] and a half dollars, I think. We have plenty of hotels and boarding houses down there. The valuation of the hotels and boarding houses I would place at $75,000; summer homes at $300,000 under the heading of pleasure resorts and other beach impovement facilities, I would say that we might include bathing pavilions, and clubs, and business houses, and $100,000 would be a very fair estimate of that. I might say, too, if you will allow me, that the Borough has just paid, last year approximately $40,000 to the then owners of the riparian rights, which we have purchased. We now own the entire riparian rights from one end of the borough to the other. We had a fine pier that was carried away in a storm, part of it, and we tore down the

balance of it, because it was [1445] not quite far enough out; and now in preparation I feel almost certain that this summer will see another $150,000 invested in a pier to be erected. The length of our beach frontage would be about 4,000 or 4,500 feet, something like that. We do not have any fishing industry directly in Seaside Heights, but we have in the sections below us and right opposite us, we have some fishing pounds out there. I do not know how many. They are a little too far out for me to see properly, and I did not take much interest in them. I am in the amusement business on the beach. I have been in that business for nine or ten years. We have candy and other things to sell, and arcades and bathing and kindred amusements.

We have trouble with the garbage on our [1446] beach. If you happen to be in the borough often, where I am, you would think there was nothing else in the world but trouble about garbage. The borough office is on Sherman avenue, near the Boulevard. From my own personal feeling on the thing, of course, I have noticed it for many, many years, I would say. In a business way, we depend on people to go in and bathe; otherwise our bath house suffers a loss. If you do not have the clear water for them to go in, of course, people are not going in.

Now, we have people employed around there to clean up the beach in front of our place, and we have one man—he is here today if you want to call him; he is particularly interested in the job, and he has particular charge of it—cleaning up that portion of our beach. The borough itself—we found it was a forlorn job trying to do it with our employees. So last year we attempted something else. We gave it out to a contractor, which cost the borough $500. The contractor concluded that he could not do it for $500, and keep it clean, and the new budget will show an additional amount to take care of the work next year.

[1447] I have seen the garbage condition over a long while, and particularly in my official career I have come

in contact with it. It appears to be a matter of frequent occurrence. I could not answer how often it comes, because there is no record. It appears when the winds come in a northerly or an easterly direction. That is the time we get the greater flow of it. We encounter garbage of all types—fruits and skins. We frequently have dead animals, the carcasses of dead animals, and—We have some driftwood in and among the garbage. [1448] As to what it costs to remove this garbage from the beach, I can just repeat what I said a while ago. The borough last year paid $500, and this year we are appropriating $200 more in the budget to do the job, because the man said he would not do it for that much money any more; he could not afford to do it; is was too much work for him. (Witness shown pictures taken December 13.) I am familiar with those conditions. I do not know whether I am at that time, because I have not got all these dates down, or anything of that type. But that is a frequent condition. Exhibit 117 represents a frequent condition on our beach. It absolutely does. Exhibit 118 is a similar type. That is a common occurrence on our beach. Exhibit 115, [1449] I think, was taken a little below our pier. That is Seaside Park. But it is so closely joined, that it all comes in. (Examining Exhibit 116.) That is it. We have a bathing beach and as I say, sometimes this (indicating) comes up under the boardwalk. This picture (No. 116) fairly represents the width and area of our beach. (Two photographs offered.) (The photographs referred to were received in evidence and marked, respectively; "Complainant's Exhibit No. 301" and "Complainant's Exhibit No. 302.") Exhibits 301 and 302 [1450] were taken this past summer. I have not the date they were taken. The photographer who took them is here. I was close by when they were taken. They represent a condition with which I am familiar on the beach. I am familiar with the condition all the

time. It is a fair daily condition, but the Saturdays and Sundays will double that.

The effect of this garbage upon our community is a question that I can only answer in my own opinion. I think the last few years we have seen a decided change in the faces of people, meaning that new people were coming in all the time. I get a great many people who say, "You have a fine place here, and if you could keep that beach clean, it would be all right; we cannot go in bathing"; something to that effect. This is a matter of constant complaint. [1451] I have at different times picked things up, and just normally looked over an address or something, and threw them away. I have left matters of those details to other hands to collect, who are in a better position to testify to them positively than I would be. I have picked up a lot of stuff and tossed it aside after I found what it was. To clean up the beach there the man uses a tractor—generally uses some kind of a rake; I do not know what you call them; he uses a rake and he uses a tractor. He carries the material away a mile or two, to a dump. He has a dump somewhere there inland. Some he buries. I suppose it all depends upon the type of stuff he takes up, what he does with it up there.

On *cross examination.* The borough pays for garbage removal provided by the borough. [1452] We do not have any supervision over his dump where he puts it; but we do have supervision over his work on the beach. I do not just know where he buries it; and the stuff —I do. I will answer that in another way. The material, or the heavy material, in the stuff is used to fill the lowlands; but the garbage, and stuff of that kind, he has to do that in accordance with the Board of Health rules and regulations, and I do not know what he does. I suppose we would say we always have some driftwood; driftwood that consists of broken up boxes, and things

of that type, boxes or crates, that might be broken, and once in a while there are heavier pieces; naturally, there is some driftwood comes in.

On *re-direct examination.* [1453] The crates and boxes I spoke of come in with the garbage and stuff.

On *re-cross examination.* Every time you see driftwood you see garbage. They float together; they intermingle together.

GOTTLIEB MANNSCHUER. On *direct examination.* [1454] I live in Seaside Heights. I am in the hotel business. I am a member of the common council of the borough. I have been such for the past six years—seven years. I have been in the hotel business down there for the last two years—four years. My hotel accommodates at one time about 75 guests. During the summer season, I have about 1,200 to 1,500 customers. [1455] They are both—vacation and week-end guests. I offer to the people that come to my hotel the usual attractions that a hotel gives. I do not know about anything else except a regular hotel. In the community we have some amusements, but the main attraction for people coming down there is for the ocean. There is some come down to go crabbing in the bay, but the main attraction is coming down to spend time in the ocean. There are some small amusements along the beach. [1456] The beach and ocean front is practically our only existence.

We have had trouble down there with the garbage on the beaches as long as I remember; as long as I have been connected or known the beach. In northeast storms that we have at times, there is all kinds of garbage comes in, such as fruit peelings, dead animals, broken up crates, whole baskets, bottles, electric light bulbs—practically anything whatever is put into the garbage. It makes the beach practically—when those conditions exist, it is prac-

tically impossible for anybody to go along in there, that is, to walk along in there. It would be impossible to go in bathing. The offensive features are the odor from the garbage lying there, and the danger of walking on broken glass; people cut their feet on it; we have had numerous cases down there of that kind. [1457] I have a number of visitors or guests there at the hotel coming in to say, "We cannot go in the ocean. It is full of garbage and glass and stuff." And they said, "We have to stay out of there." That is a matter of complaint at any time when we have one of those storms. Any time we have a wind from the northeast or east, I have always found it that way. I have seen articles or papers that had marks to identify them, such as names and addresses, but personally I have not collected any myself, but I have seen some that have been collected. [1458] I did not collect any for reference.

On *cross examination.* I have seen articles on the beach that had New York City addresses on them.

I have seen boxes, parts of crates, with names of firms from New York on them. They were the names of the firms sending out the boxes; they had tags, like "Shipped From," and where to. I took particular notice that the place it was consigned to was New York, [1459] shipped to New York—different addresses. It was not only wood, it was some part of a crate, like an egg crate, like they construct the crate, which was wood, less than a quarter of an inch thick. It was the name of the sender and the party it was consigned to—like in the form of a tag. I can't recollect the name of the sender; the only thing I recollect is that it was sent to New York. That is, Fulton Market, or something like that. Sent to Fulton Market, or something like that. I could not remember the name of the party. I can remember that it was a New York consignment. I referred to garbage and other materials coming upon our beach during a northeast

storm. [1460] That is the time when we would get the garbage. It was mostly with the storm; the storm is when we get the east or northeast wind, and whether it rained or not, the garbage started to collect and come in on the beach.

LLOYD C. RIDDLE. On *direct examination.* I live in Manasquan. I am connected with the government at Manasquan as Mayor. I have been Mayor for [1461] eight years last past. Manasquan is like all these other resorts, summer resort, nothing else. We have a permanent population of close to 2,500 and—the summer population is close to 6,000 or 7,000 additional. The assessed valuation in the community is very close to $4,000,000. We have five or six hotels and boarding houses there. I do not know what valuation they represent, or what the investment is. [1462] Our beach front runs from the Manasquan River on the south to the Sea Girt State Encampment, or the State Encampment on the north, a little over a mile of beach front. We have a boardwalk. The boardwalk is about 4,250 feet long. I think it is 25 feet wide. We have no jetties or piers. We have no other beach front improvements. Our boardwalk represents $25,000 in cost to the municipality. We have the fishing industries in our community. They employ probably 25 or 30 men during the summertime, and that have an ice and cold storage place that takes care, practically, of the cold storage business along [1463] the shore for fish.

We have difficulty with garbage on our beach. Over a period of a number of days after every northeast storm, we have garbage on the beach in large quantities. It covers the whole front of the beach. From high water mark our beach would run anywhere from 200 to 300 feet deep. This garbage upon our beach prohibits using by the people of the water for bathing purposes, and it pro-

hibits them from getting the pleasure and the enjoyment and the recreation out of the beach front.

It causes us a lot of annoyance and trouble, by having to go to expense to clean it up. [1464] Up until the last year, the summer residents on the beach have taken care of cleaning the beach practically themselves. This year from, I think it was June, we spent about $500 alone in cleaning up the garbage. And we have to appropriate more now for that purpose. This garbage holds our community back. I have identified objects on the beach which would indicate where the garbage came from. I think there was a storm sometime in June, or the first part of June this last year. And I was down on the beach, and I saw halves of grapefruit there, bottles, boxes, a cap in one instance. I had some photographs taken of some of the articles on the beach. I examined some of the bottles that came on the beach; some of the bottles came from Liggett's Drug Store in New York. And they had the name of the person. [1465] Evidently there had been a prescription endorsed on the outside. I also found a batch of American Railway Express receipts, that were tied in a large bundle, that had been shipped and delivered to New York. And those are about the character.

On *cross examination.* These medicine bottles were probably that long, some of them (indicating with his hands). They could be carried in a lady's handbag. I do not know the name of the person to whom the prescription was written. The name on it was a New York City address, the name of the store which was located in New York. [1466] That was the address of the Liggett's Store on the prescription. I did not assume anything, except what I saw—the person's name on the bottle. It was not Liggett's Store—the person's name; it had the regular place on the bottle with the name of Liggett's Store on it, and it also had the name of the purchaser on it. It did not have any address of the purchaser in the

month of June. [1467] Offhanded, I had some photographs a day or so afterwards, and I think it was around the ninth or tenth. I would say the summer season commenced practically about Decoration Day, about the 1st of June.

On *re-direct examination.* These photographs were taken at my direction by Mr. Tupper. They were not taken in my presence. They show the exact condition as I saw it the day they were taken, but I was not with him at the time he took them. I recognize objects there to indicate that they [1468] were taken on our beach. That (indicating) is the life stand, directly in front of Gladys' Garden. (Discussion of counsel.) I would say that the picture shows at least 1,500 to 2,000 feet of our beach up to these objects here (indicating), as indicated by the buildings on this picture here. [1469] That is a fair representation of conditions that I saw following this storm sometime in the month of June, 1929. The pictures were taken on about June 11th. That is when the pictures were made.

I did not see it until the storm was over. That storm was June 9th or 10th, as I recall it. I was down there the next clear day. That was the date shown on the back of this photograph, the 11th. [1470] (The photographs referred to were received in evidence and marked, respectively, "Complainant's Exhibit No. 303" to "Complainant's Exhibit No. 307," both inclusive.) The photographs that I have just referred to and described are Complainant's Exhibits Nos. 303 to 307, inclusive, as they are marked.

On *re-cross examination.* That is the only storm we have taken pictures of, yes. [1471] I would not say these pictures, Exhibits Nos. 307, 306 and 305, all show different and varying quantities. I would say that most of the material that we picked up at that time and I saw at

For Plaintiff—Patrick McDevitt—W. H. Conover, direct.

that time were lemons. These pictures show driftwood in varying quantities.

On *re-direct examination.* When I saw the beach, there was very little driftwood. Most of it was orange peels. The driftwood that I saw was mixed up with the garbage.

[1472] PATRICK McDEVITT. On *direct examination.* I live at Seaside Heights. I am in the car business. I have lived there a little over seven years. I am familiar with the beach conditions at Seaside Heights. I have often been there after a northeast storm. I am a member of the government there, as councilman. I have been a councilman for five years. We have had trouble with the garbage on the beach [1473] after a northeast storm, every time.

These (indicating papers) were picked up on the beach on the 17th—the day of our last meeting, a week ago Wednesday. I found these on the beach. [1474] They were tied up together.

[1475] WILBUR H. CONOVER. On *direct examination.* I live in Jersey City, New Jersey. I am the master of steam vessels. I have been a master of steam vessels about 32 years. I hold a license as master of coastwise and pilot of inland waters, between Cape Henry, Virginia, and Portsmouth, New Hampshire. I was the captain of the "Parker Runyon," the boat of the Board of Commerce & Navigation for about one year, 1923. [1476] I was the captain of it during Governor Silzer's administration.

At his request, I went out and followed the garbage scows out of New York City. On one occasion, I followed a tug with two or three garbage scows, and I almost forget now how many was in tow, but they left and departed from Scotland Lightship, and proceeded to sea, to the southeast by east, 20 miles. They were garbage

scows. They carried refuse of the City of New York. It was composed of orange peels, and all that sort of stuff that comes from the city garbage. I furnished a detailed report. (Examining paper.) The date of it was September 12, 1923. [1477] The name of the scows is here. They were D. S. C. No. N, D. S. C. No. W, and D. S. C. No. Q in tow of the tug "Woodman." I followed them from a point opposite Scotland Lightship to about 15 miles southeast by east of Scotland Lightship. I could not continue any further, on account of rough weather. They had not dumped yet. I did not see the scows on my return. I watched the scows from my point of view five miles further on. And then they dumped the scows, and I proceeded on back. I was 15 mile off, any they were about five miles further than I was yet, approximately. I could see them from where I was with the aid of glasses. [1478] I watched them with glasses. I have never followed any other garbage scows out, but mud scows. I could get right close up to them if I wished to, but I stayed behind. I was not close enough to identify objects in the scow; not from my distance. I knew they were garbage scows from the cargo that they had on, that I could see on account of the height of them, etc.

I have sailed up and down this coast here. During the world war I was sixteen months on the coast. That is in 1917 and 1918. I have encountered the garbage at sea; [1479] no great quantity of it, but different fields of it at times in the very course of the coastal navigation. I have never seen the garbage moving from the dumping grounds toward the shore. I have went through it, of course, between the dumping ground and the shore. The wind and currents move it, if the wind is blowing from the northeast, or from the east across those garbage dumps, that is toward the New Jersey shore. I have not been around the beaches very much myself. I do not

have the opportunity to visit the beaches. [1480] I know the courses of some of the vessels that go out of the port of New York. Various lines that follow the coast sail between the dumping grounds as I saw them and the shore. I cannot recall any other than the coastal lines. The trans-Atlantic Lines most generally take an easterly course, east or north of the garbage dumping location.

On *cross examination.* Our boat only drawed about five feet of water. And I could get close to shore at any point within a reasonable distance, and it was my business to come near the [1481] shore. If I was down at Atlantic City, I would run the same as the larger ships would run, on account of the pipe nets or pound nets extending out of the shore into the ocean. When following the coastal line, I must go out far enough to get clear of those various traps. I do not know whether any of these boroughs along the New Jersey coast dispose of their sewage out into the Atlantic Ocean. I have never seen large slicks along the water in close proximity to the shore, say, 1,500 feet out. I have not been that far away from the shore.

Q. Will you look out of the window, to the right, and in a direction which I would say was due north, and do you see a patch of water there that has a different color, and appears to be circular in formation, from the other waters immediately adjacent?

A. (Looking at ocean.) Yes, sir.

Q. And do you see on the edge, what I would describe as the southwesterly edge of that slick?

A. (Looking at ocean.) Yes, sir.

Q. A group of gulls?

A. Yes, sir. I have never seen slicks like that in the water in [1482] close proximity to the shore before to my knowledge.

For Plaintiff—Patrick McDevitt, direct.

This is the first time I have observed a condition like that.

On *re-direct examination.* We used to make a slick when we would go blue fishing, but we would do that with a grinder and pass it out. That is what we call a slick. That is fish bait. A slick is an area or section of material in the water or on the water. We used to make our own slick, in order to get fish into it and catch them. [1483] On *re-cross examination.* Referring to that area of the water that you have previously directed my attention to, I really could not say what you would call it.

Q. In that area the water appears to have a different surfacing material than the waters immediately surrounding it?

A. Yes, sir. I am not able to venture an opinion one way or the other as to the cause of that. (Discussion of counsel.) I am not in a position to explain it.

[1484] PATRICK McDEVITT. On *direct examination.* I picked up this bundle of Christmas cards upon our beach. The address of that one is Mrs. Carlino and Family, 271 West 89th Street, Bronx, New York. There are 46 of these separate letters. They are all postmarked in the City of New York, with dates in the month of December—2, 19 and [1485] 24, and that all of these letters and contents are addressed to a family by the name of Carlino, at 271 West 89th street, New York City. This bag belongs to me. That was picked up in the earlier part of December, about the fore part of December. Here are three sheets that are evidently carbon copies of what is called a coat statement of William T. Goldman & Bros., Inc., 12-16 East 14th street, New York. The date is March 4, 1927. [1487] Here (indicating) is a postcard, addressed from the Grand Central Station, 1929, but the day of the month is not in the postmark; addressed to

For Plaintiff—Frank J. Bock, direct.

Mrs. Sylvester, 639 West End avenue, New York, and this advertises a sale from Shoecraft Salon, 714 Fifth avenue, New York. Here (indicating) is a pill bottle, with some substance still in it. Prescription signed by Dr. Ball, and it is from Neuheim Pharmacy, 2081 Broadway, at 72nd street, New York. The number of the prescription is given, and the date is November 29, 1929. The number is 58091. Here (indicating) is a bundle of check stubs, or it looks like sales slips, from the Traube Dry Cleaning Company, 17 Russell street, Brooklyn, New York, a bundle of store slips. That appears to be about all, except a few milk bottle caps. Here (indicating) is another thing that does not appear to be a milk bottle cap. [1488] This (indicating) is from Levy Brothers, House of Progress, and the address is on it, 1917 South River, 756 East Tremont avenue, and 1989 University avenue, Bronx, New York. Those appear to be the addresses of that concern in there

On *cross examination.* When I first saw these articles and papers they were on the beach. Some of them were located by me in the month of June of last year; and I believe this (indicating) some other time. Part were found in December and part in January.

FRANK J. BOCK. [1489] On *direct examination.* I live in Newark, New Jersey. I am the postmaster. I have been postmaster for twelve years. I was City Commissioner of the City of Newark. Newark is governed by five commissioners. I have interests along the shore here. I own an apartment at Deal, directly on the ocean front. And I own an additional ocean frontage in Deal, and I have a half interest in a considerable plot, about 2,000 feet, along the ocean. Our invest- [1490] ment—that is, mine and my associates—in this enterprise at Deal—would run close to a million dollars. I spend the summers at Deal. I have spent, oh, probably 40 years along the

coast, not at Deal all the time. The attraction at Deal that brings me there and my investments is the ocean. There is no other attraction there besides the ocean. That is the only attraction to me.

I am familiar with the garbage on the beach. My observations have covered practically from Avon up to Elberon. I have been familiar with that during the past 40 years. [1491] There has not been any improvement in conditions. As to whether there is increase in the garbage from year to year on the beaches, I do not know that I could state positively. There has not been any decrease; I can say that. The garbage has a very detrimental effect upon shore development. I had an apartment at Deal, and I know this, that when people come to look at the apartments with a view of renting them, if they happen to strike the development during the course of an east wind, the impression is very bad, and sometimes people, while they may not say so directly, have referred to the unsightly and unsanitary condition of the beach, and it deters them from locating there. This apartment accommodates 36 families. It is right on the beach. We have our own beach.

To remedy this condition [1492] I have to pay men to keep up the beach every time and whenever there is an east wind that is continuous for 12 hours or so or more. I have not kept any account of the cost. The borough, in addition to that, at my request, has cleaned up the beach farther south. The recurrence of the garbage on an east wind is bound to have a very serious effect upon the seashore resorts, deleterious to health, because people who come to the shore come here for one purpose, and that is for the ocean, and when they go down on the beach and find it in an unsightly condition and an unhealthful condition, it naturally repels them and is bound to have a bad effect, as far as the— I commute in the summer to Newark every day. The garbage is a continual source of conversation going back and forth on the

train. When the wind is from the west, the thing is forgotten temporarily, but every time there is an east wind, or storm from the east, they complain [**1493**] about the condition, and to be perfectly frank, they "cuss out" New York City, in unmitigated terms.

JOSEPH ULRICH. On *direct examination.* I live in Seaside Heights, New Jersey. I am in the parking business. I have been there close to ten years. I have been familiar with the beach conditions for the last eight years. [**1494**] I have seen garbage down there practically after every good storm that we have; that is, a northeasterly wind. As to the condition of the beach after one of those blows, if I could have some of you fellows down there when we clean up, I could give you a very good opinion about that. But it is mostly all kinds of orange peels, and any kind of fruit, and on several occasions we have had human bodies washed up there. Last fall, I think, there was a man came ashore. Of course, where they come from, I cannot say. The decayed part of this garbage is offensive. When we have to clean it up, I had several colored fellows working there with me, and it was so strong that they could not stand it—and I thought that was pretty bad, if a colored man could not stand it. We have had bad eggs that we picked up on that special occasion; and ordinary garbage; sometimes potatoes; [**1495**] one time it washed up a lot of rotten potatoes there, and if you have ever smelt rotten potatoes, they are pretty rotten. What date it was, I could not say.

I have to do that cleaning up of garbage. That is my job in the borough. I have done it just this last year. When they could not handle it themselves, they put it out on contract. I carry it up on the beach and put it in the wagon and carry it to my own grounds. That is about a mile to the westward, going inland. We have seen it so bad sometimes, that when I would plow through with my tractor, the odors from the garbage were so

strong that you could not stand it; and the stuff would get on the wheels and the mechanical parts of the tractor, and had to be cleaned before I could get across; and the stuff would smell bad. Besides garbage [1496] there are crates and orange skins, and peach baskets at times—according to the season of the year, at times, what comes in. We would have some pieces of lumber that would come in there, like boardwalk piling sometimes, but very seldom. That is almost always taken away. Anybody that wants wood comes there and gets it. As I said, the crates such as oranges and any of that kind of stuff that fruit comes in; that is, thin wooden crates, comes in with the garbage.

STANLEY TUNNEY. On *direct examination.* [1497] I live in Seaside Heights and Seaside Park. I am in charge of the labor around the amusement company, and charge of the beach there, and proprietor of a fishing pier. I have been there in business for six years. I had all the beach to take care of, and see that it was cleaned off after each storm. That is still my job. After every northeast storm, it seems that an enormous lot of potatoes, oranges, lemons, lettuce, celery and all that kind of junk washes in on the beach; also pieces of wood. There is dead animals, rotten meat and most anything that is used in a kitchen, or in a house, that will float; half jars of pickles, or half jars of canned stuff; that is in glass jars; medicine bottles, electric light bulbs, everything you can mention that would float. [1498] It has laid in the sun, there was some of it smells terrific, especially if there is dead chickens or turkeys that has been throwed in, or cats or dogs, or pieces of beef or turkey, or anything like that. I have seen all of those things. The only element of danger is that if you go down on the beach after a good northeast storm, a day afterwards, and that stuff is soft enough, if you step

on it right, you would lose your balance, and possibly "bust" into a bottle or bulb and cut yourself.

Those are conditions that occur after every storm, what we call a northeast storm. They always bring garbage in. When a northeaster blows 12 hours, you have got garbage, and plenty of it. It has this effect on our business, that if we don't get it cleaned off as fast as we can, we would not have nobody on the beach bathing. [1499] We have quite a number of small amusements, down there, right in the vicinity of the beach. We depend entirely on the ocean front. I have identified articles in the garbage where there were names and addresses on it. Many, many times I have picked up a box, or a paper, or anything, to read it, and it was always New York City—New York City.

On *cross examination.* The garbage comes in always after a northeast storm has blown for about 12 hours; I would say approximately 12 hours, always—never with any exceptions have I seen that, with a northeaster, we did not get junk on the beach. We have all kinds of northeast storms; some are light, some are strong; some are awful wet, and some are awful [1500] blowers. I say if we have a northeast storm and it only blows 12 hours, we may not have much of it on the beach. But if it blows for 24 hours, we will have more. I would say it would have to blow about 12 hours before we would get any. According to the strength of the wind, I think, regulates the amount we have on the beach.

DANIEL J. KLEE. On *direct examination.* [1501] I live in Seaside Heights. I am Borough Superintendent. I have lived at Seaside Heights steady for 11 years. I have been familiar with the beach at Seaside Heights about 13 years. I encounter this garbage on the beach. I come in contact with it; for the past four years I have been Borough Superintendent, and it was my duty to see

that it was cleaned up, and for three years I handled it, with my help, and last year the council gave it out on contract, which Mr. Ulrich took. It is nothing but the grapefruit, dead cats, chickens; I found a pig, about 150 pounds, there two years ago; plenty of dogs, vegetables of all kinds, and the majority—quite a few bottles. We have had this condition ever since I can remember. [1502] It has been increasing at all times. Our community relies upon the beach front for its attraction to people. There is not anything else. You might say the working class of people come down there, the majority of them. They come mostly from June to October, just summer people.

I have identified objects with names or addresses in the garbage on the beach. You had a small pill bottle there that you demonstrated here a few minutes ago. I picked that up. [1503] You have an order sheet that I picked up, in that pad (indicating). Two years ago, I picked up 100 or more of those same things, that came from the Fulton Market. The Fulton Market is in New York City. This garbage is something unpleasant. We have complaints about it down there constantly.

C. A. FRANCIS. [1504] On *direct examination.* I live in Long Branch. I have lived there for 57 years. I have no official position at the present time in Long Branch. I have a private position. I am County Treasurer, and my office is in Freehold. I have been Senator from this county. I was connected with the local government—it was not the city government—from 1887 until 1905—not consecutively, however, thirty-odd years. I was Mayor there. [1505] I was postmaster there many years ago. I do not know whether that has any bearing. I was the Collector of the Port at Perth Amboy. I have not told you all the offices I have held.

I have been familiar with the conditions along the shore for 40 or 50 years. I live right near the shore. Long

For Plaintiff—C. A. Francis, direct.

Branch is one of the oldest summer resorts on the New Jersey coast. They depend [1506] principally, I think, upon the ocean for their attractions.

I have been familiar with the garbage conditions on the beach ever since I was a lad, or a boy. I do not frequent the beach as often now as I used to a few years ago; but I do, however. Our boardwalk is right along the beach, the same as it is here (indicating). I see the garbage along the beaches, lots of it. I have seen considerable animal matter, however, dead cats and dogs, and such things. I do not think they come—I am not positive where it comes from. I think I know where it comes from, but I am not positive. I cannot recall that I have seen anything among the garbage to indicate the names and addresses. [1507] I may have, but I cannot recall it just at this moment. I have been out to sea. I have not been to the place where the garbage is dumped. I have seen the garbage out at sea, as far as I could see, at times—great big splotches of it. When I have been out in my boat, I have seen it at sea. I and my friends usually go fishing three or four miles off. I have found what looked like garbage out there. It was floating in the water. Similar material can be seen on the beach. I was engaged in the fishing business [1508] at one time. My fishing nets were at Spring Lake, New Jersey, not along here. I cannot recall if I had any difficulty with garbage down there. I did not go out. I was not captain of a boat.

I will tell you the effect of this garbage accumulation on the beach, so far as bathing is concerned. I do not go in bathing, although I did some years ago; a bathtub is good enough for me; I would not go in with this condition. My daughter is a great bather, and other people who are friends of mine, and there are times when they would not go in the ocean on account of the condition of the garbage coming up on the sand and in the surf, especially after a northeast storm. I do not agree with some of

these witnesses who say that it requires a northeast wind to bring that garbage in. The tides bring it in.

After what we call an easterly blow, that is, a slight blow, the current will come to shore for miles and miles, there is no doubt about that; and that stuff floats on the top of the water; and when we have a northerly current or a northeasterly current, sometimes this stuff will float south; [1509] and then it will come back again, with what we call southeasterly currents. I believe this is a condition that has affected the shore resorts for some time. I know the condition at Long Branch. I know something has affected it down there. I do not see any demand for beach front property lately. I have had many complaints about the garbage. It is a matter of frequent complaint especially in the summertime, when there is bathing.

On *cross examination.* I do not know where this garbage that I speak of [1510] on the beach here comes from, of my own knowledge. I imagine, but I do not know.

TONY COPPOLE. On *direct examination.* I live in Asbury Park. I am a landscape gardener. I have something to do with the beaches. I clean up the beaches. [1511] (Examining papers.) I found these on the other side of the pavilion the last time I was cleaning the beach. That was this month some time; I cannot say the date. I cannot remember now, because you people had it here that time, and you would not show it, and they said we could not prove it now, on account of the people not being here; that is it; it was about that date. It was this month. I think that is the date (January 13th). I found it on the other side of Seventh avenue, where you could see it; there is another one. A lot of paper and junk was there. I read the note, and I said "This must be of [1512] some importance." And then I looked at the name.

This (indicating) appears to be a promissory note for $50, dated N. Y. May 24, 1928. "On June 21st after date

For Plaintiff—Walter J. Sweeney, direct:

I promise to pay to the order of (Blank) $50 at my office, 33 West 14th street, N. Y. C." Signed, Max Feder. The indorsement on the back says that it was deposited in the Central Mercantile Bank & Trust Company of New York. It was right there on the shore.

This (indicating) is a laundry slip of Caronlyn Laundry, 105-111 East 28th street, New York City. Well, I found—I don't know whether it was turned in or not; it was what you call a pill bottle; there was a note in there; and I picked it up between the jetty and the post office, where the mass of bottles was, and junk, and I opened that bottle, and I thought there was a note for somebody with the address on it, and I did not know what it was, and I turned it in to the office. [1513] There was garbage and tin cans and pieces of grease, pieces of meat. And I would get up—I got this out of that general litter; this bunch of papers out of that.

WALTER J. SWEENEY. On *direct examination.* I live in Seabright. I am Borough Tax Assessor. I am familiar with the conditions along the beach here. [1514] During the time that I was on the Board of Health in 1927, I had very numerous complaints, and I brought it before the Board of Health, and we took it up with the State Board of Health, and they said they would take it up with the State of New Jersey, and guarantee an answer as to what they were going to do. A month or two later, we received an answer stating that they were investigating and would probably call on Seabright for some assistance. In the last part of 1927, when I was acting as President of the Board of Health, I went before Governor Moore and stated the case to him, and he gave us practically the same answer, that he would guarantee us that, if we would help the State of New Jersey out, they would soon clear up the situation. During 1928 and 1929, as I was going around with my tax book along the beach front, practically every house I went into, with some exceptions,

said they were not coming down here any more, that they were going to sell their property; that their children could not go on the beach because of this garbage. That was a matter of common complaint, at practically every place I went along the South Beach. On two or three occasions I went into the home of Mr. Reiker and Mr. Sisson, [1515] and they showed me where the litter and stuff was on the beach, and said they would not let their children go down there and bathe. And I promised them that the matter would be taken care of, and it would affect the amount of the taxes on their property. I took it before the tax board, and they said if I was satisfied to reduce the taxes on those places, it was satisfactory to them.

And in the last two years I have cut at least one and one-half per cent. from their assessments because they will not let their children go down and they have caused a lot of places to be closed, and a lot of places to be sold, because their children could not go in bathing. The children cannot go in bathing on account of the garbage.

On *cross examination.* They have been kicking about the garbage condition, and said they could not come down when the beach was not in a fit condition. And the assessed valuation is just as much on the beach as it is on the rest of the property, and [1516] the beach is a part of the property, the most valuable part. And the way the thing had been lately, I had to re-assess them and cut them off. By "lately" I mean within the last four years. Before that time the value was not increased. There was nothing changed until in the last three years. In the last three years the value has decreased. During the ten-year period I referred to I was not assessor at all. I was on the board of health, and I found that there was not any increase in the value on the books for seven or eight years. The town has not increased the value for tax purposes.

For Plaintiff—John G. Gruetzner, direct.

JOHN G. GRUETZNER [1517] On *direct examination.* I was about to explain certain exhibits which I had. I told where I found them. I pointed them out on the photographs between First and Second avenues. They all belong to one concern. It is Daniel Reeves, Inc., 56 West 183rd street, New York. They seem to be delivery slips; they are delivery slips from New York concerns to this Daniel Reeves. And there are some carbon copies of sales slips from Daniel Reeves. [1518] There are probably 100 of them. Here (indicating) is Heinz' bill to Reeves. They appear to be the invoices to Reeves from different concerns for merchandise, and carbon copies of sales slips of Reeves to other people. Some of them have the name of the other person on, and some do not. Evidently some were just cash slips. I do not think we need to take very much time about those. My duty is to see that the garbage is taken off the beach immediately. I have here a statement of 1929, and I have one [1519] particular sheet—our payroll is made every two weeks, and I have a statement of it here. June 8 to June 22, there was a storm here on June 10. Our beach was covered with garbage and trash, etc. We spent in those two weeks $475.73 to clean the beach front. The two weeks previous to that we spent $131.80, and that was the average for the preceding two weeks, back to January 5 of that year.

In going over my time slips, I find the cost of cleaning the garbage off the beach was $350 plus; we had truck hire, four trucks at $10 day each, which was $40 a day, $390. That is just to clear off that one storm. My foreman reported to me that we had three trucks of our own, and we hired four, and they averaged ten loads; 60 loads were taken off that day when we hired those extra trucks from one blow. [1520] That was all in one day.

Then I took my two trucks to clear off the beach, but that was all in one day. I have not the record for

other times, but that is the average cost; it is lighter sometimes; sometimes it is even more. I have made efforts to remedy this condition, or to bring about a discontinuance of the garbage nuisance. I wrote a letter on March 22, 1923, to the Street Cleaning Department of New York, and I got an answer from Commissioner Taylor on May 23, 1923. This says:

"Mr. John Gruetzner,
"Superintendent of the Beach,
"Asbury Park, N. J.
"Dear Sir:

"Yours of May 22 received. We have made an investigation and find that none of our vessels has dumped at any other point than the designated dumping ground specified by the Supervisor of the Harbor, 20 miles southeast of Scotland Lightship, and 18 miles offshore of Asbury Park. There have been no accidents of any kind which would cause garbage scows [1521] to shorten their load any during the week ending May 19, 1923, which might be the cause of garbage going upon the beaches.

"As you are doubtless aware, this matter is under Governmental inspection of the United States Navy, under Captain Courtney, who has an inspector on each one of our scows going out to sea, to make out a report in duplicate, the original going to Captain Carroll and the duplicate coming to this office.

"In addition to this, Government patrol boats pick up these scows going out, between the Lightship and the dumping grounds, and coming in from the Lightship to the harbor, and there has been no report that we know of that any garbage has been deposited before reaching the principal dumping grounds. You can rest assured that every precaution will be taken by the Department and the Government to prevent the accumulation of garbage being washed ashore.

"A study of the tides show that they travel at the rate of 2 miles an hour for the period of 6 hours, so that the distance that any material could approach the shore at Asbury Park would be 6 miles, and then it would be caught by the outgoing tide and carried out again.

For Plaintiff—John G. Gruetzner, direct.

"I have personally visited the dumping grounds on three occasions, and my observation has been that about 90 per cent. of the material emerges within 10 or 15 minutes after the cargo is discharged from the scows. But the other 10 per cent. consists of bottles of certain kinds and the like, and commences to float until filled with water, when it, of course, sinks. It seems to me that unless an accident occurs to one of our scows, from collision or otherwise, there is no chance of the garbage of the City of New York reaching the beaches.

"Very truly yours,
"A. A. Taylor."

That is A. A. Taylor, Commissioner. The agency or motive power of the garbage coming in is the tides and winds. Mr. Taylor does not mention the winds. He just says ordinary tides. [1523] (Attempt to read statement of Dr. Soper.) Dr. Soper was President of the Metropolitan Sewerage Commission in New York when it made a detailed survey nearly 20 years ago of the action of wind and ocean currents on the garbage dumped outside New York Harbor. That was printed in July 15, 1926.

[1524] On October 5, 1926, I wrote to the Supervisor of Harbors of New York, "Enclosed you will find pictures taken during the summer of 1926 which show the deposit of garbage washed up on our beach front." And that was confirmed by him October 6. I commenced the complaints May 22, 1928. I wrote Commissioner Taylor, of the Street Cleaning Department. I just called attention to the fact that large quantities of garbage was washed up along the beach during the high tide Saturday, May 19, and also Sunday morning. I sent a copy of it to the War Department, and got an answer from the War Department May 23. I do not seem to [1525] have an answer from Commissioner Taylor. I might say that Commissioner Taylor sent a man right down here to investigate, and he took pictures with Mr. Munder; he

would come down here and take pictures. He came down every time we complained to the War Department and went over the situation and took pictures. Mr. Munder was represented to me to be a man from the Street Cleaning Department of the City of New York.

In 1927, we were sued by a bather, the city and the bathing lessee; they were sued by a citizen of Asbury Park. He got a bad cut in his knee. And I spoke to Mr. Munder about the bottle stuff that washes up on the beach front. He cut his knee on a bottle, he claimed, on the bathing beach. And I said it [1526] would be a good idea if the corks could be left out of the bottle, so that the bottles could sink; that the people seemed to have a habit of leaving the cork in the bottle, and the bottle will float and washes up on our beaches. He even thought that it would be a good idea if it was broadcast, WNYC, a broadcasting station in New York. It was just mentioned in the conversation. I do not know whether I mentioned it or whether he mentioned it. He did not say he would have that done. These complaints went right on to February 13, 1929. I sent a letter to Commissioner Taylor on the same day. I got an answer from Commissioner Taylor February 14, 1929. And there he says:

> "I beg to acknowledge receipt of your letter of February 13, with photographs of the beach at Asbury Park, taken on February 6, 1929, also some taken August 24, 1928.
>
> [1527] "On examination of our records concerning the movement of scows during the period February 5, 6 and 7, it fails to disclose that difficulty was experienced with any of the dumpers which could cause them to deposit their loads before reaching the designated dumping grounds, and I am at a loss to understand how the beaches could be littered with any refuse taken to sea by our scows.
>
> "Further, I note that there is a great deal of driftwood and we are positive that this does not

come from any of our scows, as no wood is allowed to be deposited on the garbage unloaded at sea. However, you can rest assured that every effort is being made to hasten the construction of incinerators, and to eliminate the dumping of garbage. Three incinerators are now being constructed at Brooklyn, which will be completed and in operation this summer, and an additional appropriation of $5,000,000 has been authorized by the Board of Estimate and Apportionment to complete the program for incinerators for New York and Brooklyn, so that the garbage will be disposed of by incineration.

"To expedite the work of the preparation of plans, drawing, etc., for those plants, the force of engineers and draftsmen has been increased, and a concentrated effort has been made to complete the incinerators and put them in operation at the earliest possible moment.

"Very truly yours,

[1528]

"A. A. Taylor,
"Commissioner."

That was the first time that I have had any intimation of what was going on about incinerators. This Munder might have been here at least six or eight times between 1928 and 1929. I have supplied him with pictures of garbage on the beach. He has taken pictures himself of the garbage on the beach. He found the garbage on the beaches below us, when we did not have any in Asbury Park. I did not show him any articles in the groups that would indicate where it came from, but at the time that we did not have any garbage, he himself picked up some stubs at Bradley Beach, coming from New York theatres.

There is a letter from the War Department dated February [1529] 16, 1929, to Mr. John G. Gruetzner, Beach Superintendent, Board of Commissioners, Asbury Park.

"Receipt is acknowledged of your letter of the 13th instant and photographs showing the refuse on the

beach at Asbury Park on August 24, 1928, and February 6, 1929.

"Please accept my thanks for the pictures, which will be kept in the files of this office in support of the written and verbal reports received on the subject. My office would be very glad to see any of the Commissioners personally when they come to New York City.

"Yours truly,
"Garnett,
"Captain, U. S. Navy,
"Supervisor."

During the close of August, 1929, Mr. Munder came in and said he had some good news for me. He said by the close of the year that there would be only about 25 per cent. of the garbage dumped at sea. That they would have the incinerators in operation [1530] and that the garbage would be reduced to 25 per cent. of what they had been dumping out that summer. The stuff that we have on our beach, as to the articles, and so on, is the same thing as that list that I prepared from Seaside Heights, which was introduced as Exhibit No. 119. It is the same general class of material. We have nothing but complaints, and it certainly retards people from enjoying the surf bathings. There are periods when they cannot go in bathing. It always comes on a northeast blow, or an east blow, or a southeast blow. If we have had a northeast blow for two or three days, and it turns to the southeast—and the prevailing wind in the summertime is southeast—then that brings the garbage in from the south just as well. The Northeast wind will carry it practically ashore, and then the southeast wind will blow—and any blow [1531] on a slant would bring that stuff in.

Q. Now, on Exhibits 117 and 118, Mr. Crowe called attention to certain articles, and he wanted to know what they were. Can you tell him, for instance, about this semi-circular object?

For Plaintiff—Henry L. Finch, direct.

A. (Examining photograph.) It is a broken pail, a papier mache pail.
That is the same right there (indicating on photograph), shown in Exhibit No. 117. In this Exhibit 117, these fluffy looking objects in the right-hand corner are chickens. I do not see anything but [1532] chickens and ducks; those seem to be the majority of them.

On *cross examination.* I never been out to sea.

On *re-direct examination.* I was along the day that Mr. Johnson took the pictures last Monday in New York. I saw the boats he described over there, the scows, etc.

[1536] HENRY L. FINCH. On *direct examination.* I live in the summertime in Middletown Township, about four months of the year, from June 1st. That is about 12 miles away from the shore, I should say. The point of contact with the ocean from the place where I live is over at Seabright. I use the Seabright Beach Club. I live in New York City the remaining portion of the year. New York City is my legal residence. [1537] I am a stock broker. The firm is Finch, Wilson and Company, 120 Broadway. I have been summering in Middletown Township for three years, and previous to that at Monmouth Beach, since 1918.

I think I am familiar with the conditions of floating garbage on the beach in that vicinity. I have been familiar with it, I should say, that length of time, since all my stay there. The garbage conditions along the shore are absolutely repulsive at times, I should say. You can't tell on any particular day what the conditions are going to be, but every few days, I should say, I go there to bathe with my family, my children, and it is so repulsive that we can't go into the ocean. I go back and forth quite frequently on the Sandy [1538] Hook boats. The foot of Cedar street and 42nd street, uptown.

For Plaintiff—Henry L. Finch, direct.

They are Central Railroad Company boats that carry people between New York and Atlantic Highlands. I have seen the garbage scows many times. I generally see a tug with three or four barges being towed along, and with all kinds of refuse—it is hard to describe—everything in sight, pretty much, loaded on these barges. I very often see garbage in the water as we pass along; I would say as we go along, just where the boats travel. You can see it all around you. [1539] I see barges stocked with, as I say, about everything in sight in that line, and there is no question but what some falls over the sides. I see garbage in the water alongside of the scows or in their wake during my trip from Cedar street to Atlantic Highlands. It seems to me that I see it pretty steadily all the way down. I should say pretty much throughout the whole distance to Atlantic Highlands.

The Seabright Beach Club is a club that gives bathing facilities to its members, and general social gatherings. It is a private membership club. [1540] The primary purpose of the Beach Club is to offer bathing facilities to the members and guests. That is the reason for its existence.

As to the efforts made to preserve the bathing conditions for its members, I should say everything is done as far as we can to have everything as it should be. I mean, cleanliness, of course, comes first. Everything about the place is kept up as it should be, and, of course, we can't control what comes on to our beach. We do the best we can to keep it cleaned up as it comes in, but it is some big job. The Seabright Beach Club is in the Borough of Seabright, within the borough limits. It is hard to say just how frequently during the past five or eight or ten years [1541] garbage on the beach or in the water has interfered with bathing on the beach of the Seabright Beach Club. Of course, you never can tell. You go down there and expect to find the ocean suitable

to bathe in, and very often—I could not say how often, but I should say very often—you find it so that it is impossible to go into the water.

On *cross examination.* I live in Middletown Township, about 12 miles away. I go to Seabright to bathe, I suppose, three or four times a week. Maybe more. I don't know where Raritan Bay comes in there, exactly. I am not qualified to say how far south of the outlet of the Raritan Bay Seabright is. [1542] Seabright from Sandy Hook, I suppose, is by rail ten miles.

Q. Now, you travel down and up daily on the boats of the Central Railroad of New Jersey?

A. I wouldn't say daily. Sometimes I go by train. Those boats leave from the foot of Cedar street and 42nd street. They serve meals on those boats. I wouldn't say they had a very elaborate restaurant. [1543] I would say just an ordinary meal. I shouldn't think you would have to get very far down before you would observe garbage scows in New York Bay. I should say probably about from beyond the Statue of Liberty you might pick them up. I wouldn't say I saw an endless, unbroken line of garbage from the Statue of Liberty down to Atlantic Highlands, but every here and there. I saw particles floating in the water. I don't know where they came from. I didn't see them drop into the water. I wouldn't be able to pick out the scows of the Street Cleaning Department of the City of New York from other scows unless they were so labeled. [1544] I have never made any effort to do so. Whether the scows I saw were the scows of the City of New York I don't think I could say definitely. Whether there were a large number of gulls following these scows, I never noticed particularly. There may have been. I didn't take any particular notice of them. I wouldn't say particularly that these scows had a very offensive odor. I never noticed them particularly, that is, to have an offensive odor. Unless they

came right up on top of the Sandy Hook boat. No question they would have an odor. There wouldn't be any gulls on or following these [1545] scows, that I particularly noticed. I have never been out to the dumping grounds in the Atlantic Ocean.

CHARLES S. McVEIGH. On *direct examination.* I live at 40 East 71st street, New York City. I am a lawyer, practicing in New York City. I live in the Borough of Rumson, Monmouth County, New Jersey, in the summertime. That is near the Atlantic Seacoast; [1546] three-quarters of a mile away. On point of contacts the bridge going across the Shrewsbury River at Seabright. I am a member of the Seabright Beach Club. I am president of the club and have been for two years. And before that I was treasurer for, I think, about eight years. We have about 95 season members and about 210 stockholding members. We have over 300 members of the different classes. It is for the purpose of supplying bathing facilities to members of the club at Seabright.

I have had experience with the garbage in the ocean. My experience with it has principally been on the beach in front of the club at Seabright. In the course [1547] of my duties as treasurer I have had from time to time to give instructions to superintendents with respect to the removal of garbage when it came in in such quantities that it was detrimental to the bathing. Such condition occurs principally after east or northeast storms or winds. I don't know that I could go so far as to say that it does occur invariably. It is the general rule. The garbage interferes with the use of our beach to a very material extent. There are floating lemons and oranges, grapefruit, that come in while you are bathing. The general class of material is the class I have just described. Fruit rinds is the principal thing I observed. [1548] As to broken bits of vegetables, meats or decayed vegetables, or anything of that sort I wouldn't say definitely

whether I recall things of that kind. I probably have seen them, but I don't want to testify to that. As to garbage on the water, as distinguished from along the beach or in the water I have never noticed it in front of the club, except occasionally coming in, in particles, rinds and things like that, I have noticed it on the way down, on the boat from the foot of Cedar street going down to Atlantic Highlands; the Central Railroad of New Jersey boat. I have seen garbage floating on the water. I have noticed the scows as they went out and the garbage that fell off of them. I have seen garbage fall off the scows. I have never noticed any initials or numbers on the scows. I am not familiar with the initials indicating the Department of Street Cleaning of the City of New York. [1549] How often I have seen the scows going in or out is very difficult to say. I go up and down practically every day during the week. I have done that over 14 years. I could not say whether this is a matter that I have noticed during all of that time.

As to the general effect of this garbage upon the development of those seashore communities, I can only tell you with respect to our community, which is Seabright, where it has given us a tremendous amount of trouble. At the Beach Club we have had to have it picked up, have a man go with a wheelbarrow and pick it up off the beach. It is unquestionably a matter of common conversation in the community among the members of the club. It undoubtedly has an influence upon the community in the enjoyment of the seashore in that neighborhood. [1550] I have heard the comment very frequently—at our club we have a pool in addition to the ocean bathing, and I have heard people say time and time again that the bathing was so bad in the ocean they would not go in; that they preferred to go into the pool. They said the bathing was so bad due to the garbage.

For Plaintiff—Van Rensselaer Halsey, direct.

VAN RENSSELAER HALSEY. On *direct examination.* I live at 139 East 79th street, New York City. I am a member of the firm of C. D. Halsey & Company, 43 Broad street, stock brokers. I summer at the seashore in New Jersey. [1551] I am down there generally between the 1st of May and the end of November. I have a summer place there at Rumson, New Jersey. I have maintained it myself for the last five years, but I have lived there with my family prior to that for about 15 years. I frequent the seashore at Seabright and up and down the shore there quite frequently. I do not have a boat. When I say "up and down the shore," I mean mostly Seabright and at the Seabright Beach Club. I am a member of the Seabright Beach Club.

[1552] I have had experience with the garbage. Quite frequently during the summer we notice it. I have noticed it on the beaches, and particularly on the beach of our club, the Seabright Beach Club. I have noticed it sometimes in the rivers and sometimes in the bay. I have seen the garbage scows going in and out. I travel on the Central Railroad boat for Highlands. That boat is generally known as the Sandy Hook boat. It does not land at Sandy Hook, however, it lands at Atlantic Highlands. I have traveled on that boat about ten years. I have seen the garbage scows on that trip pretty generally—it varies from time to time, but pretty generally I would say somewhere between just above the Narrows, out to a point off, I would say, where [1553] the channel turns off Sandy Hook there—anywhere in between those two points. The ordinary scow type, I can't just tell you how long they are, but they are the normal large scows. And I have noticed them with great piles of garbage heaped high upon them. I wouldn't say that I noticed any initials on the scows, or letters. I have noticed them from time to time with numbers—I would say numbers—but I wouldn't want to tell you that I could recognize the initials. I wouldn't say I ever seen the letters "D S C" on any of

those scows. The wind is sometimes pretty strong and sometimes the scows are not covered, and in strong winds, high winds, some of that garbage is lifted off the top or the sides and distributed in the water. [1554] For what distance between the Narrows and the landing place of the boat at the Highlands I have seen the garbage in the sea or in the water is hard to answer. It varies from time to time. Generally between the Narrows and, as I say, the turning point there of the Ambrose Channel, I have noticed garbage in the water.

The presence of this garbage in the water or on the beach interferes with the enjoyment of the seashore in that neighborhood quite materially. It is a matter of common conversation or discussion. It affects the people who use the beach. They make comments about it. One of our frequent comments when we come down to the beach is to ask, "How is the garbage today?" That is the general subject of conversation from time to time; particularly after easterly or northeasterly storms or winds, we generally expect to find garbage on the beach or in the water. That is pretty generally the rule. [1555] On *cross examination.* I have seen large quantities of wood floating around in the water. I do not refer to that wood as being garbage in the water. What I referred to as garbage in the water was fruits, decayed fruits, vegetable tops, greens, various different kinds classed as ordinary garbage, as distinguished from wood; material that has come up on the beach along with wood. I am a member of the Seabright Beach Club. Certainly more than half of the members of that club come from the City of New York. [1556] They are principally New Yorkers that patronize the Jersey beach during the summer and members of the Beach Club. I have never seen any of the boats of the Supervisor of the Harbor going up to these scows and collecting their permit, or passing around them. I haven't seen the gray-colored boats at the scows. I don't know the Supervisor's boats.

For Plaintiff—Van Rensselaer Halsey, direct.

I have never seen any boats going up to these scows and having a temporary exchange of conversation or something else.

I have seen garbage on the scows in upper New York Bay, but not in the water. I have seen garbage in the water in the lower bay. I have described it as a point somewhere along the line of the Ambrose Channel in general, between the Narrows [1557] and the point where the Ambrose Channel turns into the sea by Sandy Hook. The point at which I saw garbage was at the end of the Ambrose Channel, where the ships take a southerly course to the Highlands; generally along that route I have seen garbage along the route of the Ambrose Channel, between Sandy Hook and the Narrows. I am certain it is Ambrose Channel.

Q. I show you a map annexed to the bill of complaint in this action, which indicates the easterly line of Ambrose Channel from Sandy Hook Light Vessel, and ask you to point out just about where you saw garbage in the water? (Showing a map to the witness.)

A. There is the Narrows there (indicating) and here is the point.

[1558] I will say from the Narrows southerly to a point more or less where the Swash Channel joins the Main Channel, as described on this map. In other words, between there and there (indicating). I have seen garbage in the water commencing at the Narrows and extending all the way down to a point where the Swash Channel joins the Main Channel, the main channel as is marked on this map. I did not always see the source from whence this garbage came. I did not always know what kind of a vessel, if any vessel, deposited the garbage in the water at that point. I don't know how long the garbage was there. [1559] When I refer to garbage, I distinguish between garbage and wood. I saw wood in the water. I saw wood and garbage in the water.

For Plaintiff—Joseph C. Hoagland, direct.

JOSEPH C. HOAGLAND. On *direct examination.* At the present time I am living at No. 19 East 66th street, New York City. I am in a variety of businesses, primarily the real estate business. We have a good many firms. The Hoagland Corporation is the parent concern. [1560] I spend the summer at Rumson, New Jersey. I frequent the seashore regularly. There is very seldom a day that I am not there. I visit the shore generally at Seabright Beach. I am a member of the Seabright Beach Club and chairman of the Beach and Pool Committee. As chairman of the Beach and Pool Committee, I have general supervision of the cleanliness and care of the beach and pools. We have every day some trouble. That is emphasized by a greater quantity of garbage following easterly and northeasterly winds, but we have to clean the beach—we have three or four men employed a greater portion of the day cleaning the beach after the tides. It will come in very largely on the high tides, and as the tide recedes it will leave this deposit of garbage, fruit and vegetable matter on the beach. With that will be a continuous quantity of wood and wearing apparel, old [1561] shoes, a few dead fish and a life preserver or two, perhaps, and we had to keep a cart on the beach. We have to have men regularly employed to clean that beach and take away this refuse. I do not know where the garbage comes from, of my own knowledge. I have been out to sea off the coast a good many times. I have seen garbage in the water. The quantities or area is difficult to be exact about. I have seen floating grapefruit and oranges in the water. I have seen on relatively calm days circles of fruit and vegetable matter floating in the water. I should think these deposits of garbage in the water are both isolated units and accumulations. I think you will find an occasional piece of garbage, as though it had been dropped from a boat or something of that sort, but I think you will find groups of garbage, you might say, as though it was the result

of a receding tide, and they will be along in line. You know, they form on the ocean—all kinds of debris will form more [1562] or less of a line. If you run along off the coast in a boat you will come across an area of garbage or debris; then you will go into a relatively clear area and then pull into another area of garbage and debris. I have not been to the dumping grounds. I have seen the scows on the way in or out in past years. I don't very often use that Sandy Hook route at the present time. This garbage is a very serious detriment to bathing, and it is an expensive thing for the club to take care of. I couldn't reduce the expense to dollars and cents, because the men we employ for that purpose have other duties. For instance, we utilize life guards to clean the beach. They arrive early in the morning and clean the beach before we start our bathing; then during the luncheon hours and at other times they devote part of their time to that work.

I have been in the real estate business actively from since 1910. I have not had any experience with seashore properties directly on the ocean. [1563] We have owned property in the Borough of Rumson since 1893. I am not in a position to express an opinion as to the effect upon the development of that seashore vicinity of this garbage coming in on the beach as a real estate expert. Coming in contact with the people down there, I hear comment about the garbage continuously. It is a matter of very general conversation. Whether it affects the people in coming or going to the seashore as a summer place I don't know that as a matter of fact. I know that it is a matter of common talk that the beach at times is so thoroughly objectionable that if they cannot become members of such clubs as the Seabright Club, where considerable effort is spent to clear the beach, they do not want to bathe there.

On *cross examination.* I should say that almost every day we have some [1564] trouble from garbage and wood

For Plaintiff—Joseph C. Hoagland, cross.

coming in. There are certain occasions after a storm when it is more pronounced. In normal clear weather we always have more or less garbage on our beach. We do not have the large deposits of garbage except after these easterly and northeasterly winds. I think that is the prevailing wind that seems to bring in more garbage than any other. I think that the east and northeast, perhaps a little with a southeast wind, but in a generally easterly direction. Among this material cast up on the beach is a large quantity of wood.

I am a resident of Rumson. I have lived there since 1893. Bathing is done at Seabright. [1565] Rumson is not on the ocean. You understand that Rumson and Seabright are generally considered as one community. The two are separated by a bridge that spans a very narrow river known as the Shrewsbury River. So that the Seabright Lawn Tennis and Cricket Club, for instance, is located in Rumson. The communities are one and the same to the person who has not lived there for a long time. They are not under the same governmental form. They are both boroughs. To that extent they have the same governmental form, but not the same borough administration. I have occasionally gone from Sandy Hook, we will say, where the river starts in, the Shrewsbury River, you come out on the bank at Sandy Hook, and gone over as far as Coney Island, for instance, and I have noticed garbage deposits substantially the entire distance between the point of Sandy Hook and the vicinity of Coney Island. I have seen some garbage in the water. That would be practically extending across the whole of the mouth of the Harbor of New York. That would generally describe it. [1566] Here is Sandy Hook (indicating). Yes, I should say that if you call this the mouth of the Harbor of New York, that I have seen garbage distributed generally across that entire section. I did not know the source from which that garbage came. I didn't see it drop into the water or put into the water. We

have had an oily deposit that we described, perhaps not technically correctly, as "tar" on the beach. It is a crude oil deposit. I have been advised that it comes out from the tankers at sea. I have also been told that it came from the Constable Hook Refinery of the Standard Oil Company of New Jersey, but I don't know that to be the case. [1567] We were not bothered as much last summer as we have been heretofore with oil. We have been bothered considerably by this oil getting on our beach and on the feet of the bathers in the past.

On *re-direct examination*. The testimony that I have given about garbage is garbage entirely, not tar or oil.

BERNARD C. McKENNA. On *direct examination*. I live in the summer at Long Branch, New Jersey. I was born there. In the winter, at present at 215 West 92d street. I am an attorney and a member of the Bar of the State of New [1568] York. My legal residence is New York City. My personal hobby is surf fishing, standing on the beach and casting out into the surf. I have fished the Jersey beaches since I was ten years old. Probably this summer I have been on the beach on a hundred different occasions, sometimes early in the morning, sometimes all day, sometimes in the evening. I have always fished from the piers at Asbury Park and Long Branch. I have fished the Jersey beaches from Seabright to Point Pleasant and all the way down, you might say, to Beach Haven.

I have noticed garbage, particularly grapefruit rinds, the skins after they have been eaten, oranges, some of them decayed, turnips, carrots and various vegetables of that kind. Occasionally you might see an old cat, sometimes rags and cloth, sometimes slippers or shoes, very often bottles. We have a habit of picking up clams on the beach and opening them and putting them into some container to save them until [1569] such time as we want to use them to fish with. For that reason we would pick

up the empty, what you might call Mayonnaise bottles, and wash them out and put in them things like that, and they have a little lid that screws on. We have observed those. And a great many corks, like out of catsup bottles and things of that kind. And at times—well, I haven't looked at your pictures there, but however bad they are, as the Irishman says, they are no exaggeration. I have seen garbage a foot deep along the beaches at Allenhurst. It congregates in streaks along the beach sometimes; at other times it will be up against the bulkhead, if there was one, or jetty. Standing on the piers I have observed the drift, as one gentleman described, along the water. There might be hundreds of yards of this stuff being wafted in that way by the tides or winds. Around in August or September you might see it being brought in in the afternoons, I think mostly by, you might say, the trade winds; but generally the winds coming from the east bring it in that way. I have seen it in the water. I have seen it while bathing there. I have gotten it on my fish line, rags, and had to take them off my hook, and things of that kind. I have been able to identify articles, as to their source particularly last—I never thought then of [1570] being a witness here, but last summer or last fall, in September, I had occasion to see something like yellow pages about 15 by 20—pink, rather. I picked them up and they were black typed, and they looked like order sheets of some concern here in New York. I am sorry I didn't preserve them for the name. And I was surprised to see how quickly they reached the Jersey shore. It was about 6 or 8 weeks from the date written on them. I didn't know how long they had been held in the office before they were discarded.

Being property owners down there, as I say, my family, all my life, we have frequently heard people say that they preferred to go to live much further down the beach where they didn't have this annoyance of garbage when they were in bathing. I have seen times when it was so

thick that it was unpleasant to be in bathing there, and then when it comes up on the beach and dries out it smells. If there is anything like an old cat or something like that, decaying vegetable matter, you can't go within—you have to make an arc around the smell to get by it at times. [1571] I would say after some of these storms that would come in and lie there until—of course, in places like the Beach Club and the places that these gentlemen have described, or places in Asbury Park, they rake it up and either cart it away or dig a deep hole and bury it, but if you are on the beach up around where there is no care taken of the beach, you can probably get a stench there every day all summer, more or less, from this decaying stuff, watermelon rinds and every possible kind of table refuse and garbage generally, rags and things of that kind.

On *cross examination.* I observed these conditions on the beach every day that I was fishing there last summer, from 50 to 100 times. [1572] I had no interest in it except as property owner and resident. I started to fishing in early June. I would say that I would observe it more after the storms. The beach would be perfectly clean only when it was raked up. There is always garbage or material being washed up on the shore or lying there from previous days. It comes in with the tide, and when the tide recedes it is left there in a streak like that. If the next tide was a [1573] little higher it might carry it back again. If a higher wave came up in the next tide and took it back in the undertow, it might take it that far and be whipped up again. I have never seen any of it rolling from the shore back on to the water, but I have seen it on the shore. I haven't marked it and watched it to see whether an hour later it was in the undertow again, but I have seen it so thick on the beach that walking along you would slip on it, and sometimes you couldn't walk between the garbage. I have seen it a foot high in places.

For Plaintiff—Bernard C. McKenna, cross.

I fix the determination of one foot by half the way to my knee, is a foot. [1574] It would be bottles, catsup bottles and stuff like that. I wouldn't say there wasn't any wood on the beach or anything like that, but I wouldn't say that there might not be sometimes pieces of a catsup bottle or container or some of these paper boxes, probably; but the thing that would stay in my mind would be —the stuff that was particularly objectionable would be the smell from the decay. I didn't measure it with a ruler. As I say, I have seen it at times about a foot high, I would say. This material would consist of bottles and vegetable matter and wood. I have also observed the scows towing the barges out to sea.

[1575] The material I saw was mostly vegetable matter. When I testified as to garbage being one foot high, it was generally what we speak of as garbage. I understand by the general term "garbage" refuse that we considered came from New York [1576] down here on to our beaches. There might be a little driftwood in it. I say there might be little pieces of driftwood there, too. I have often seen halves of watermelons and things of that kind. I have fished at Seabright, North Long Branch, Long Branch, Elberon, Deal, Allenhurst, Asbury Park, Belmar, Spring Lake, Point Pleasant. Maybe I haven't mentioned them all, but that is my hobby, surf fishing, standing on the beach and casting out in the surf for striped bass. I belong to the Asbury Park Fishing Club. I think I also belong to one or two of the other clubs down there, not Belmar, but a couple of others.

I testified to having seen some papers in the water that had the name of a New York concern on them. [1577] I took them out and read them, laid them on the jetty or something to dry them so I could read them. They were in the water and I picked them out, and put them on the jetty. I think the first one, as I was drawing in my line it caught on it that way and was drawn in by the sinker or the hook. I saw them in the water in front of

me, and the first one, I think, came in up to my feet on my line. I picked it up and looked at it. I think I commented on it to somebody at the time. I have often thought of it since, because to a fisherman, he often wonders how long it takes that stuff to drift down there to the beach. I don't know how it got into the water. I didn't see it go in. I don't know how long it drifted.

On *re-direct examination.* [1578] I commute back and forth on the Sandy Hook boat. I have often times seen the scows taking out the garbage. I think they call them open scows separated with partitions or pockets, towed out by tugs. I think I have seen probably initials on the tugs, on the stacks. I have seen these scows going in and out as we pass along sometimes, as we are coming in and out on the Sandy Hook boat around the Narrows there. They pick them up and they go off to sea. I think as they cut across, we continue on down to the pier and they cut off, going out to sea, out in the vicinity of Ambrose Channel, somewhere out that way. I have been close enough to see what these scows contained. You can see they contain the usual—what I consider the city garbage. I couldn't [1579] recall any wood. I wouldn't want to swear that I have at any time on the scows seen boxes or crates or slats or these slat lids or boxes that fruit comes in in the market, like strawberry crates or tomato crates or any of those thin slatted wooden boxes, but I have seen fruit and garbage, old skins of fruit and stuff of that kind.

On *re-cross examination.* [1580] I think I might have seen like the large letter "M" on the stack of the tugs, or I think the scows might have had some lettering, but I didn't make a mental note of it.

On *re-direct examination.* I suppose the "M" stands for the line of the tugboat company.

For Plaintiff—George E. Joline, direct.

GEORGE E. JOLINE. On *direct examination.* I live at Eatontown. [1581] I work for the Long Branch Daily Record. I went with Mr. Johnson, Mr. Garrett Johnson, to take some pictures along the beach on February 24th. Those pictures were taken by Mr. Johnson in my presence. I am shown in two of them. These pictures truly represent what they depict. (Discussion of counsel.)

[1582] Number 2686 is a photograph made at the Monmouth Beach Club from the end of jetty, showing garbage mass in ocean.

(The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 308.")

Number 2687 is a photograph of the same location showing garbage on ocean surface about one-tenth of a mile from shore.

(The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 309.")

Photograph Number 2688, made on Monmouth Beach Club beach, showing garbage on surface of water in bathing area.

(The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 310.")

Number 2689 is the same location as the last, looking diagonally downward from left to right, showing garbage on beach, and to the right of this showing garbage in water.

(The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 311.")

Number 2690, same as Number 2689, except for Mr. Joline.

[1583] One is a close-up, so that you can identify objects, and the other is a perspective picture. (The photograph, No. 2690, was marked Complainant's Exhibit No. 312 and received in evidence.)

No. 2691 is from the same location, showing the garbage on the beach from a different point of view. That is a

little different section. That is up nearer the jetties, the stone jetty. Some part of this here might have been in the other picture, but this section up here might be different. [1584] The jetty is just north of the Monmouth Beach Club, bathing beach. That is where this beach starts in there, commences. (The photograph was received in evidence and marked "Complainant's Exhibit No. 313.")

No. 2692 is made in front of the Monmouth Beach Bathing Pavilion, showing details of garbage mass on the beach. In the garbage mass there was grapefruit rinds, orange peelings, lemon peelings. There is a loaf of bread. There is a banana stalk, some tin cans or bottles, some wood. There is a discarded toy. There is a brush, and there are parts of citrus fruit of some kind. There is a glass container. There is a tin can. There are parts of a barrel, barrel staves, and in here there are all sorts of mixed up garbage. There is an electric light bulb also among it. There are numerous tin cans and parts of a chair and—in fact, I picked up—I didn't pick up, but I [1585] noticed onions and apples and parts of greens, like beet tops, celery, lettuce, spinach, endive and the like—all that sort of green stuff that is found among vegetables, bananas and banana skins. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 314.")

No. 2693 is taken from the same location as 2692, and shows garbage and refuse on the beach and in the surf. The ones that you have had so far have been Monmouth Beach. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 315.")

No. 2694 was made in front of the Monmouth Beach Bathing Pavilion and shows water in bathing area. It shows garbage in the bathing area of the water. I was present when that picture was taken. The area shown in that picture is directly in front of the bathing pavilion. [1586] This picture shows water. There is so much

garbage the waves couldn't break. They just spread out. There is a boardwalk comes to an end right south of the bathing pavilion beach, and the ocean cuts in a little ways there. This shadow that you see there is the shadow of the railing. This picture was taken just about noontime, probably a little after noon; 12:15. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 316.")

No. 2695 is taken from the pier at the foot of Seaview avenue, Long Branch, and shows garbage in the ocean about 30 feet from the beach. [1587] I was present when that picture was taken. These black marks up at about the top, at the middle of the picture are the tops of old piling that extends out above the water. That is quite some distance away. I would estimate the distance to be from that piling at least 50 feet. It is part of an old jetty that was there at one time. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 317.")

No. 2696 was taken from the same location as 2695, showing garbage in the ocean 50 feet from the beach. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 318.")

No. 2697 is made from a pier between Cooper avenue and North Broadway, Long Branch, looking almost vertically downward on the ocean surface. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 319.")

[1588] No. 2698 is taken from the same location as 2697, showing bathing area—showing garbage in bathing area. (The photograph referred to was received in evidence and marked "Complainant's Exhibit No. 320.")

As to weather, it was a day something like today. It was very clear. There was just a gentle breeze, I would say. You could notice probably two or three hundred yards to sea a streak all along the shore line, as far as you could see, all along the Long Branch Beach and

Monmouth Beach front. I could identify articles of garbage further out than that, what we presumed would be bottles or tin cans, as they would ride up over a gentle swell in the ocean. They would come up and the sun striking on them would make them glisten. You could see those cans and bottles glistening in [1589] the water perhaps two miles out.

On *cross examination.* There was a very light breeze blowing on this day, hardly any wind. That breeze was blowing from the east. It was clear the day previous to that, also. I think the wind was blowing from the same direction; a light easterly wind. All these pictures were taken on the same day, February 24th, this year, both at Monmouth Beach and Long Branch. [1590] I think it was just about noon when I met Mr. Johnson at the beach, and we were at the beach until after 1:30.

On *re-direct examination.* I picked up some things at the time he took these pictures. These are the articles that I picked up. One is a Blue Bird Dairy Company milk bottle cap from 910 Longwood avenue, Bronx.

Another is a Home Laundry Service ticket from the Bronx, 1010 East 173rd street, and there is an address written on this ticket 1288—it looks like Hoe avenue. (Mr. Crowe. There is such an avenue.) And on the back there is an inventory of the contents of the package, evidently.

Here is one from Bristol, Meyers Company, Hillside, Elizabeth post office, New Jersey. It is a part of a post [1591] card, apparently, that was addressed to R. L. Gould, M.D., 340 West 29th street, New York City, New York.

Here is a business card from Isaacs, 871 Ellsmere Place, Bronx.

Here is a National Laundry ticket from—it has a Manhattan address at No. 2 West 111th street, I guess it is—near Fifth avenue, anyhow, 41st street, and a Bronx

address at 147 Wilkins avenue. No other identification on that.

Here is a Bond Laundry Service ticket, 405 East 175th street, Bronx, and it is addressed to Rato or Roto, is the name, at 675 Coster street, apparently. I don't know where Coster street is.

Here is a card of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada, weekly sick and relief certificate, John Meighan, 62 West 124th street. Then card No. 211,696.

Here is Hurtig & Semons, Apollo Burlesque, some avenue that is rubbed out, New York. It is the season pass for the theatre. Here is a book containing a check book, but it isn't a real check book, but it is an advertisement, a happy new year card in the form of a check drawn to blank for 365 happy days. But anyhow, the card in the end is Oscar Glass, 1145 Longfellow avenue, Bronx, and it is drawn on the [1592] bank of Our God. It evidently is a form of new year's card. (Lengthy discussion of counsel re Supervisor's reports).

[1594] Mr. Minard. I offer that part of the report of the Chief of Engineers of the United States Army for 1915, page 1640, the paragraph entitled (D) "Disposal of street sweepings." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 321.")

The same report for 1916, page 1765, the paragraph entitled in italics "Disposal of street sweepings," and the paragraph entitled in italics "New York City Garbage." (The documents referred to was received in evidence and marked "Complainant's Exhibit No. 322.")

The same report for 1917, page 1852, the paragraph entitled in italics "Disposal of street sweepings," and on page 1853 the paragraph entitled in italics "New York City garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 323.")

For Plaintiff—Exhibits 321 to 335 in evidence.

The same report for 1918, page 1896, the paragraph entitled in italics "Disposal of street sweepings," and the paragraph entitled in the italics on the same page "New York [1595] City Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 324.")

The same report for 1919, the same titles of paragraphs, page 1997, and finishing on page 1998. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 325.")

The same report for 1920, page 1993, the paragraph entitled in italics, "Street Sweepings," and the paragraph entitled in italics "Garbage," which is carried over for about—for nearly one-half of page 1994. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 326.")

The same report for 1921, page 2016, two paragraphs entitled as the last report, "Street Sweepings," and "Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 327.")

The same report for 1922, page 2135, the same headings, the paragraphs with the same headings, "Street Sweepings," and "Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 328.")

The same report for 1923, page 1980, the same headings, "Street Sweepings," and "Garbage," respectively. [1596] (The document referred to was received in evidence and marked "Complainant's Exhibit No. 329.")

The same report for 1924, page 1978, the paragraph entitled "Street Sweepings," and on page 1979, the paragraph entitled "Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 330.")

The same report for 1925, page 1893, the paragraph entitled "Street Sweepings," beginning at the bottom of that page and continuing on page 1894, where there is

For Plaintiff—Exhibits 321 to 335 in evidence.

also a paragraph entitled "Garbage," which continues to page 1895. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 331.")

The same report for 1926, page 1892, the paragraph entitled "Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 332.")

The same report for 1927—by the way, I think 1927 is already in—anyhow, we will just put it in here to make sure. The report of 1927, page 1914, beginning with the paragraph which reads: "For City Street Sweepings," which is the second from the last paragraph on page 1914, and continuing that paragraph to near the top of page 1915 and down to the heading [1597] "Ashes and Rubbish," and so forth; then on page 1915, the paragraph entitled "Garbage," which concludes on page 1916. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 333.")

The same report for 1928, page 2012, beginning with the paragraph about the middle of the page, the quoted paragraph about the middle of the page, entitled "For the City Street Sweeping," and continuing down to the heading "Ashes and Rubbish and So Forth"; and on page 2013 the paragraph entitled "Garbage," the whole subject entitled "Garbage." (The document referred to was received in evidence and marked "Complainant's Exhibit No. 334.")

The same report for 1929, page 2079, that part from and including the paragraph which begins "For the City Street Sweeping," down to "Ashes and Rubbish"; and the paragraph on page 2080 entitled "New York City Garbage and Refuse." And there is under that heading—sometimes there is a little more than a paragraph, but in each instance I am offering all there is under these respective headings. (The document referred to was received in evidence and marked "Complainant's Exhibit No. 335.") We now offer in evidence the annual reports

of [1598] the Chief of Engineers of the United States Army for the years 1915 to 1929, inclusive, and refer particularly to the parts that I have mentioned and the pages I have mentioned.

[1601] WITNESSES FOR DEFENDANT.

WALTER S. ANDERSON. [1602] On *direct examination.* My full name is Captain Walter S. Anderson of the U. S. Navy. I have been detailed to the duty of Supervisor of New York Harbor. I have acted as naval captain on this detail since the 31st of last May. My office has jurisdiction and the enforcement under a Federal law which is entitled "To prevent the injurious and obstructive deposit in the waters of New York Harbor and Long Island Sound, their adjacent and tributary waters," and that law provides that no materials to be deposited in those vicinities can be moved without permits from my office and the point of deposit being designated thereon. Permits have been issued by my office to the City of New York to dispose of garbage and refuse materials at sea. [1603] In issuing these permits we have dealt directly with the old Department of Street Cleaning, which is now a division of the Department of Sanitation. They have to apply on a printed form for permission to move and deposit whatever class of material they may have. We have certain dumping grounds that are customarily used, and if their request meets the approval of the office, the permission is granted and the permit is issued. This permit is good for only a limited number of days. On these tow boats towing loads of New York City garbage we have an inspector called a dumping inspector, whose job it is to see that the dumping does not take place short of the designated dumping grounds.

[1604] Also we have on duty patrol boats from my office which are customarily stationed in the vicinity of

the Narrows and around Sandy Hook or a little outside, and these boats inspect outward and inward-bound tows and make appropriate notations upon their permits which they collect. In that way we maintain a check as to whether or not the dumping has taken place at the authorized location. Our patrol boats inspect the permit and the materials moved under that permit and note the endorsement on there—note the time, and the time of passing and returning are subsequently checked up in my office to see whether the lapsed time would permit them to go to the designated dumping ground also. The status of the inspector assigned to scows is a little unusual. He is appointed and employed by the Federal Government, but compensation is made for that service from the Department of Street Cleaning, and eventually from the contractors who do the towing. But [1605] they are paid by me and I am reimbursed. He is my subordinate and employee. He is answerable to me. He is not an employee of the City of New York. At stated periods the contractor reimburses the Federal Government for the amount. I get the checks that are signed by the contractor. The payments are made directly by the contractor to me. The City of New York are the intermediary, If I remember correctly, I send the bills to the city, which transmits the bills to the contractor. But eventually the checks that reach me are made out by the towing contractors and by me deposited in the treasury, and I as a separate proposition pay these dumping inspectors, just like I pay any other personnel that are under my control. With respect to these patrol boats, [1606] in the upper bay and the lower bay, it is the function of these patrol boats to inspect all commerce passing in and out of the port of New York, and the conditions with regard to any materials getting into the water, that is all the commerce that might have materials which would get into the water. That is our exclusive function.

For Defendant—Walter S. Anderson, direct.

During the year different dumping grounds are designated in the permits issued by my office. In the dead of winter they are permitted to dump at a shorter distance at sea, on account of the difficult conditions at sea. It would be impracticable and I really think it would be questionable humanity to require them to go out as far in the winter season as in the summer season. In summer they go out to a point 20 miles to the southeastward of Scotland Lightship. In the dead of winter they go out eight miles. That is for a period of about three or four months, and then for short period between those two times they go out for 12 miles. But in the spring and summer and fall the distance is 20 miles to the southeastward, southeast by east of Scotland Light, which puts it about 22 miles off the New Jersey shore. The dump that is located 20 miles south by east of Scotland Lightship is approximately 22 miles from the nearest point of land in New Jersey; [1607] southeast by east, bearing from Scotland Light.

Permits are issued by my office to other concerns for the disposition of materials on the high seas.

In general they are to dredging companies that wish to dispose of mud or mud and rock; also to contracting companies that desire to dispose of what we call "cellar dirt," which is debris from building that have been torn down. For example, when the Waldorf Astoria Hotel was torn down, the contractor deposited that material at sea under permit from my office. Those are the principal classes of cases that seek deposit at sea. These materials are deposited to the southeastward of Scotland Light, but at less distances than the garbage; mud 3 miles, cellar dirt, 4 miles; stone of considerable size, 6 miles; [1608] and sludge, sewer sludge or something like that, 8 miles. We do not customarily have an inspector aboard the towing tug in those cases, but the patrol boat in the Sandy Hook vicinity, which we call the outside boat, is charged with observing that the deposits are made properly. They

follow them along and see that it is done, and the reason that we have the particular inspectors on the tow boats towing the garbage is because that point of deposit is so much further out that the regular patrol boat would not be in a position to look out for all points of deposit. It can look out for the shorter ones. The supervision over the dumping at the 3, 4 and 6-mile dumps is maintained by means of our outer harbor patrol boat. We maintain an inspection to assure [1609] ourselves as best we can that improper materials do not go into the scows, while moored at the harbor dock. Because if we think we are permitting a certain class of material to be deposited at a comparatively short dump, we want to be sure that material that should go to a further dump does not get into it, and we take vigorous action in case we find any violation. Also, we have a system of receiving reports of loading from certain government inspectors that are on duty in connection with dredging operations. And I also have one boat which customarily patrols the harbor each day, that submits a daily report, and as a result of all of these reports and a cross check-up that is made when they are recorded in the office, we maintain a pretty efficient inspection of how the loading goes on, in regard to the force available.

As to the size of this inspection force, I have a harbor patrol boat that makes the rounds each day, and the number of government inspectors who may be on jobs of dredging, of course, varies with the number of dredging jobs. But there are at least several. Then I have two inspectors who are officially making inspections of the water front of the harbor in addition to one whose principal job is inspection in connection with oil pollution down around Staten Island. And besides that I have the cooperation of certain other government departments [1610] that have much larger personnels. The exact degree of efficiency of cooperation is one that I am not able to judge of, whether it is cooperative, but I do know that I have

received reports from them in the last few months, and I gather that I am getting a rather considerable degree of cooperation from it, which in effect enhances my field force. I have three inspectors who go around to these various private dumps, as distinguished from city dumps, to see whether or not the materials going into the scows of these dumps are the class described in the permits two on that duty principally.

With respect to condemned cargoes of foodstuffs, vegetables and fruits and the like, my office or department maintains supervision over the disposition of such cargoes at sea to a certain extent. We don't permit any material like that to be deposited at a less distance than 25 miles from shore, and we have a certain measure of cooperation from the local boards of health, and outward-bound vessels are permitted take condemned materials of that class on occasion for deposit at sea, and we receive a certificate signed by the master that he will not deposit it at a less distance than 25 miles. And with regard to the supervision we [1611] exercise, we naturally have regard to the reason for violations. There is not much reason why an outward-bound vessel should violate that limit, because they are on their way and might just as well keep on until they are 25 miles out. So I feel pretty sure that the conditions are complied with there. From time to time condemned cargoes of foodstuffs, vegetables and fruits, are also deposited on the high seas, but it should be made clear that those are, compared to the amount that goes into the garbage scows, those amounts are relatively negligible. I have the figures that I get in these certificates, that they will dump it at least 25 miles at sea. These things pass my desk and I know as a matter of general knowledge from seeing them and knowing how much the other is, that the ratio is practically a negligible one. I am referring now to the aggregate amount over a period of time. These other vessels dump only as cargoes are condemned while the City of New York dumps

every day that it is not prevented by heavy weather, which is infrequent.

[1612] Every agency, regardless of whether it is governmental or private, that moves refuse excavated and dredged material has to get a permit from my office with the point of deposit stated, with the single exception of the section dredges that are operated under the Chief of Engineers. Those, being operated directly by the engineer personnel, go to sea and deposit it in appropriate locations themselves, being government activities. As a matter of fact, if my office wished to assert its right, it probably could assert its right there, but my office, you understand, is under the Secretary of War and directly under the Chief of Engineers. Scows of the Navy Yard in New York deposit materials on the high seas. They are required to go out to the garbage limit, although the proportion of garbage in their loads is a small proportion. Theirs is generally a rubbish and refuse proposition. I believe that at times there is garbage there, and probably habitually, but in a comparatively small amount. [1613] But to safeguard that proposition we send it out to the garbage limits. The Navy Yard and the City of New York are required to dispose of their refuse materials at points that I have indicated, namely, 8 miles, 12 miles and 20 miles out to sea. No favoritism is shown any governmental department in that regard.

The inspectors from my office that accompany these tows of the City of New York to sea submit a report upon the dumping which they have accompanied to my office. That report is submitted in duplicate. A copy of it, as a matter of courtesy, is furnished by my office to New York City authorities. This is a copy of the report of dumping signed and certified by the inspector of my office with respect to the materials deposited at sea by the City of New York. (Looking at paper.) [1614] I know the man's name and recognize the form. Each

time one of your inspectors accompanies the dumping of the city's scows at sea, he files a report in duplicate in my office, showing that the dumping took place, where it took place, and such other data as his printed form calls for. A copy reaches the Department of Street Cleaning. The exact detail as to whether he furnishes it to the representative of the Department of Street Cleaning, who in recent months has been on the boat with him—whether he does that or not I cannot say, but it reaches them. (Discussion of counsel.) [1615] The forms have been the same for a long time and certainly for the last year. This handwritten sheet is part of this report. It is signed by one of the dumping inspectors. His signature I recognize. They do not always have another sheet attached to them, you understand. When it does, it is a part of the report. [1618] (Extended discussion of counsel re reports of dumping.)

Mr. Crowe. Three were selected because the witness testified that on May 1st and 2nd, 1928, the dumpings occurred at the 20-mile point, and I am offering these reports as the reports of the inspector who accompanied the tows to sea, and the signature to each of which is identified by the Captain, wherein the inspector who accompanied the tows to sea on these days shows that the deposits were made at the 20-mile dump southeast by east of Scotland Light Vessel. [1619] (The papers referred to were received in evidence and marked "Defendant's Exhibit 1," "Defendant's Exhibit 2" and "Defendant's Exhibit 3," respectively.) [1621] As to the amount of garbage dumped, I think probably the most exact way for me to do it would be to look at a typical day or two from my records which I have here. I have got an assistant here who can look it up in just a minute. It is a good many hundreds of tons per day at the present time. [1622] (Reference made to Plaintiff's Exhibit 335, which is the report of the Supervisor of the Harbor of New York for the year 1929, page 2081, you make this state-

ment: "It is probable that a great deal of garbage is dumped at or inside the Harbor entrance by the enormous tonnage passing in and out of New York, and also that the local floating equipment throws more or less garbage overboard.")

During the year 1929, there were violations or complaints filed by my office with the prosecuting authorities of the Federal Government respecting the matter of violating dumping permits and regulations. There were approximately 13 violations filed by my department against steamboat concerns entering and leaving the port of New York in 1929. [**1623**] That relates entirely to the dumping of garbage. There were some other cases of rubbish and refuse. These materials are dumped by vessels other than any of the vessels operating under permits issued by your office. In each year there is always a certain number of violations filed by our office against shipping concerns for the same thing of recent years. That really commenced about 1924 or 1925, reports of that nature.

Q. Captain, we have had the testimony here on Monday by witnesses who were passengers aboard the Sandy Hook boats operated by the Central Railroad of New Jersey. They saw garbage in the upper and lower bays of New York and if that condition existed wouldn't it be detected and discovered by the two patrol boats maintained by your office?

A. Any habitual condition like that would be. With regard to isolated cases of course we can't speak with assurance. [**1624**] There is a strong likelihood of detection.

On *cross examination.* The basic law under which the Supervisor of the Harbor [**1625**] acts was passed in 1888 and was for the purpose of preventing injurious and destructive deposits in the waters in this vicinity which I have named. Therefore, the duties which the Supervisor performs are in pursuance of that act. He is

charged to enforce that act. He may permit dumping at sea because he believes that when certain kinds of material are dumped at certain locations he is thereby preserving the integrity of these harbor waters, which is his mission. I think it must be from the point of view of navigation that we exercise jurisdiction, because that is where the Federal Government would get its right.

The Supervisor's office receives complaints from time to time from representatives of cities or villages on the coast, both in New Jersey and Long Island, and from individuals about the dumping of New York City garbage. [1627] Our office has done something to relieve the cause of complaint. When I speak about my office I speak not only about what I have done but what my predecessors have done, too. When a complaint is received we immediately investigate, and I might say that not all the complaints received are well founded. We have also charged our patrol boats and inspectors to be very careful that no short dumping occurs, and I believe that our system is such that short dumping never occurs except in a case of an accident. Once in a great while an accident occurs and sometimes there has had to be premature dumping in order to save life. A scow would become partly full of water. Those are very infrequent occasions. On one [1628] occasion the scow was in collision with the the rip rap around one of the light houses in the lower bay. Representations have been made to the City of New York from time to time by the Secretary of War, requesting that steps be taken— The basic law under which I operate states that the Supervisor of the Harbor will be a line officer of the Navy serving under direction of the Secretary of War, and I take my orders from him and am furnished by his office with copies of letters which he has written the City of New York on this subject. He furnishes me with complaints that reach him with regard to this, and requests that I reply direct to the complainants in many instances, which I do, furnishing his office with

copies of my replies. [1629] (Discussion of counsel.) I was only furnished copies of the letters, so that I can only furnish copies of the letters now. (Mr. Minard. I offer them for identification, to be presented on rebuttal.) (The papers were marked "Complainant's Exhibit 336 for identification," and "Complainant's Exhibit 337 for identification.") [1630] I received a letter dated June 6, 1929, from A. A. Taylor, Commissioner, reporting on the quantity of garbage being dumped at sea, and so forth. I have here a true copy of it. (Mr. Minard. I offer that for identification.) (The paper referred to was marked "Plaintiff's Exhibit 338 for identification.") I am familiar with the reports of my predecessor regarding the dumping of garbage at sea, made to the Chief of Engineers from year to year. [1631] I have made a report myself during the incumbency of my office. The report of 1929 was partly my report. I mean that during that fiscal year there were two supervisors. I was the latter of the two. This report says:

> "About eleven years ago, at the request of the New York City Commissioner of Street Cleaning, and at the urgent solicitation of the Commissioner of Health, the supervisor reluctantly authorized the disposal of city garbage at sea as a temporary measure."

The status of that dumping at sea has never changed from the original temporary measure, except that it has been long continued. [1632] I believe that they had no other practicable means of disposal available. This temporary addition arose, as I understand it, as it appears by the report, in 1918, when the Barren Island Plant burned, 1917 or 1918. The temporary situation which was reluctantly permitted at that time has continued now up to this time. I say in this report:

> "Experience indicates that garbage dumped at sea, no matter what distance from shore, is likely to wash up on [1633] the beaches. In addition, the towing of such material through the harbor is highly objectionable." (Discussion of counsel.)

That is my language. [1634] (Further discussion.) [1635] There are two contractors engaged in dumping the city garbage at sea. They are Moran Towing and Transportation Company and the Cahill Towing Company. These reports show in a general way the part of the city the garbage comes from and from what docks the dumping inspector may have started out, but not in a detailed way. I inspect the harbor in person from time to time. I also have gone out to the outside dump, but I have not gone to the extreme 20-mile limit in person. I have never had any opportunity on these trips to observe where the garbage went after it was dumped. I have received official reports as to [1636] where it went after it was dumped. Such reports are part of the records of my office, and I have studied them. I permit the towboat for certain scows. Sometimes we give continuing permits. I think in the case of these we give what we call "continuing permits." [1637] The permits cover a definite period of time and terminate at a definite time. They must be turned in within four days if not used. This other material that I have spoken of, as mud and rock and cellar dirt and so forth, that material sinks immediately with the exception of very small and light pieces of floating debris. We take steps to prevent heavy floatable material being put in the load, because they would be a menace to navigation. The sewer sludge comes from the City of Newark. I don't think there is very much of it goes out now. [1638] That would sink.

On *re-direct examination.* Speaking about that sludge, I should say that it probably slowly settled to the bottom. The fact that it is sludge indicates that it would sink.

Q. And by "debris" you mean joists and timbers and laths and plaster and such materials as are contained in a building like the Waldorf-Astoria, in process of demolition?

A. Only very light material of that kind. Heavy timbers are not permitted to be deposited under the permit.

For Defendant—James D. Duggan, direct.

It would be light, small, floatable material, wood or paper. This material, this debris, is dumped at the 4-mile dump. You understand that floatable material in time will become water logged, [1639] depending upon the size of it and the porosity and other elements. It will float for some indefinite period of time.

On *re-cross examination.* I have not had occasion to complain about wood and stuff of that kind being included in the garbage that was towed out to sea. I have not received any complaints about wood being in the garbage. In other classes of material dumped at sea there sometimes have been larger pieces of wood [1640] than there should have been. When I refer to the other classes of material dumped at sea, I mean the materials dumped at the three, four and six mile dumps.

JAMES D. DUGGAN, on *direct examination.* I live at 6 Front street, New York City. I am connected with the office of the Supervisor of the Port of New York. I am permit clerk and deputy inspector. I have been so employed in that office since 1906. [1641] I have produced this morning the records of the office showing the persons or concerns to whom permits are granted for the disposition of materials at sea. (Discussion of counsel.) [1642] Captain Anderson has testified to dumpings made at the 3, 4 and 6-mile limits. I can give the names of the persons or concerns that dump at these off-shore dumping grounds. I now have before me a permit of September 17, 1929. The Moran Towing and Transportation Company has taken scows—in this particular case, one from the Cunard Steamship Company, Piers 53 and 54, North River, to sea, and dumped a thousand yards at the 3-mile limit. [1643] That was mud. There was only one dumper. The Moran tugboat was towing the dumper which contained mud. It was taken from the Cunard Steamship line. I have the Cahill Towing line. There is the Morris and Cummings Dredging Company. They dump mud. There

is the Henry Dubois Sons Company. They tow mud. [1644] Then there is the Arundel Corporation. They dump mud at three miles. And at the present time they are dredging rock off Corlear's Reef at six miles. What I have given you relates to the three mile dump. In the immediate past O'Brien Brothers have dumped cellar dirt. That is four miles. Moran has taken tows out there from Fourth street, Brooklyn, the Moran Towing and Transportation Company. They dumped cellar dirt. Now there is the Bouker Contracting Company. They dump cellar dirt. [1645] That is likewise at four miles. The Cahill Towing Line takes cellar dirt out. I have given you the names of all the concerns dumping at four miles. Where there is rock in the dumpers, they have to go to six miles, and at times mixed with the cellar dirt there is rock. Then we give them a permit for the six mile dump. They have to go six miles. Where there is stone larger than one-man stone. I have given you the names of all concerns that dump materials at the off-shore dumps. And these concerns are dumping materials at these dumps under permits at the present time, as well as in the past.

[1646] FREDERICK A. GAINARD on *direct examination.* I live at 5 Park avenue, West Orange, New Jersey. I am a coast pilot and marine surveyor. I have pursued that calling about 22 years, in conjunction with being a master mariner as well. I have an unlimited master's license for all oceans, with various pilot's licenses along the Atlantic coast. I have made investigations or observations at sea with respect to garbage dumped by the City of New York. I was accompanied on these occasions by other persons. [1647] They were Captain J. Bergston and Captain C. H. Lawrence. And we always took another man with us named Captain H. Slayberry. I made these investigations at the instance of the City of New York. The first visit of investigation made by me was January 30, 1930. We

proceeded from New York on a towboat following the garbage tow, to a point at the 20-mile dump, watched the garbage dumped. The scows proceeded back to the city and we stayed with the flotsam of the dump. We followed it from the time of dumping until it almost completely disappeared, due to the heavy beating it received from the rough sea and snow, until what was left was such a small amount that it could not be identified as the garbage that we—it mixed with other garbage that floated along the coast and you couldn't tell whether it was ours or what it was. This garbage was dumped at about 7 o'clock in the morning. [1648] It was dumped at 6:55 A. M. This garbage was dumped at the 20-mile dump. I followed that garbage from New York City the night previous. I was in transit the entire night following these garbage tows to sea. A signal was given from the towboat towing them.

I observed the scows dumping. The towboat blew for the dump, and they discharged the forward hopper, two hoppers of the barge, and they discharged the two after hoppers of the barge, and then the two center hoppers. Meantime the tow was proceeding through the water, causing a suction in the wake which stirred this garbage up, a good part of it sinking at the time of dumping. [1649] At first at this 20-mile dump there was considerable sea on, and the garbage didn't stay in an island very long, I should judge about 3 to 5 minutes. Then it flattened right down, due to the action of the sea and the suction of the barge being towed through part of it. The barge is towed through the garbage as it discharges. After the barges or scows are completely discharged, the towboat takes them on a circular course and practically retraces the course that they came out on, back to New York, and he goes through—or pretty near—and goes through some of the garbage which he dumps. The area of surface the dumped material covers after the dumping process varies with the wind and the sea. On this occasion I should judge it spread [1650] over about a mile in

length and about 200 feet in width in the first dump, 20 miles.

At the time of dumping we had an ebb tide and the wind was about east, northeast. As to the velocity of the wind, I should judge, from my notes made at the time, it was blowing about 20 to 30 miles an hour. It shifted from east, northeast, to northeast at 10 A. M. in the morning, and started blowing a full gale with snow. The garbage then, due to this heavy sea, got whipped about and beaten up till a good part of the fruit was torn to shreds, and there was about 10 per cent. of the remaining flots at the time of the dump left at 10 A. M., and this was in pretty bad shape. When I say "bad shape" I mean it was considerably torn and beat up as if it was put through a crusher. It was flattened out and a good part of the 10 per cent. that was remaining was about a fathom under the water. This garbage moved, stretched out in long streaks. [1651] It drifted to the south, south of its original dump. It drifted about ten miles, which would put it about 14 miles from the nearest land, from bearings. That was from 6:55 A. M. until 11:25 A. M., the same morning, about four and a half hours. The total distance which this garbage moved under a gale of the velocity which I have testified was about 10 miles. My observation discontinued at 11:25. There wasn't anything that we could identify as being the garbage after that, due to the heavy snow which set in, and what was left was in such thin streaks, although we might know it, we couldn't say it was ours. There wasn't enough left to really stay with, so we returned back to the city.

I mentioned about fruit rinds being in the garbage. [1652] The heavy sea just churned them, tore them up. The sea was breaking very hard, due to the heavy wind which tore it apart, and it beat—by doing that it beats all the oil out of the rind that is in the fruit, vegetable oil that is in it, and causes it to become water logged and sinks much faster than it would if the sea was smooth.

For Defendant—Frederick A. Gainard, direct.

Based upon my observation of this garbage dumped on this occasion, [1653] and judging from what did sink and was sinking, I would say that there would be very little of that left at the end of an hour. It was sinking at such a great percentage of the total amount that was there, and when we left it, we steamed in toward the beach and came back towards where the garbage was, and we didn't see but very, very little, and we couldn't identify it as our own. The closest that this garbage came to the Jersey shore was 14 miles.

We made another trip to sea on February 1st, for the purpose of conducting the same kind of an investigation. When I say "we" I refer to the same persons mentioned by me as accompanying me on my first trip. We left on a towboat from the Battery, following a Moran tow with city dumpers, three city dumpers named A, S and M, and we arrived at the position of the 12-mile dump, or southeast, seven eighths, east from Scotland Lightship 12 miles, when the tug blew to dump. The tug dumped in the same manner [1654] in which he dumped on the previous trip. He started to blow and the different barges started dumping their hoppers, and the whole tow moved through the garbage as it was dumping, causing it to be stirred up and broken up, and the stuff that would sink, the heavy matter in it would sink, and so forth. The wind was southwest at this dump. There was very small sea at the time, but the wind was increasing. But even with the sea, this garbage was being rolled over and flattened down to the usual flat mass. The wind increased from fresh to a strong breeze, with a short choppy sea and breaking. The tide was ebb at the time of the dump, about half ebb. That dump dumped at 12:10 A. M. on February 2nd, and we stayed with that—with the aid of the searchlight on the garbage we stayed right in the middle of the mass and we drifted with this garbage about two and a half miles in five hours, taken from bearings of the lightship and the Highland Light, until at daylight. We stayed there

till daylight. The wind went down then, the wind calmed down, the sea calmed down. We stayed there until 6 P. M. the following day, and the garbage had drifted to the east about two and a half miles and stretched out in long streaks, considerably beaten and floating—the big percentage of what was left was floating underneath the water. When I say the big percentage of what was left was floating, under the water, I mean you could see papers, fruit skins and rinds below the surface, and some on the surface. The gulls, of [1655] course, come down and tear into what they want out of this garbage and eat it up, and they help to spread the garbage in the direction in which the wind is blowing, also thin it out. We followed that garbage from 4:30 P. M., February 1st, until 6:00 P. M. on February 2nd. It was dumped at 11:53 P. M., February 1st. We remained with that garbage continuously from 11:53 P. M., February 1st, until 6:00 P. M., February 2nd. That is about 18 hours. All of the materials moved to the eastward away from the Jersey shore. [1656] The second trip we made to sea, the wind was—started with a southwest wind and increased, and from that to a dead calm. Then the wind went into the eastward, light. The distance between the 12-mile dump and the nearest point of land on the Jersey shore would be 12½ to 13 miles. I have told you all pertaining to the dumping at the 12-mile dump on our second trip.

We made another trip to sea for the purpose of observing the dumping of garbage by the City of New York, on February 29th. We went out to the eight-mile dump. We went out on a tow boat, followed the Moran Towing Company's steamer Julia Moran with three dumpers. We also took—picked up the Cahill Towing Company's steamer with three dumpers, and we followed the two out and got between the two when they both dumped at 10:15 P. M. That was six scows dumped at one time, and they covered about three miles in length, the length of the tow at dumping. I mean from the time they

dumped until they came [1657] back, the garbage was dumped over a 3-mile limit. There was an ebb tide with a southeast wind at the time, moderate wind. We stayed with that until morning, about all of the night observing with the searchlight. We stayed with the garbage, which consisted of the usual fruit and so forth, and when the wind shifted to the westward, freshened, in fact it blew quite hard—about 20 per cent. was left in the morning, and that was being pretty badly beaten up with this fresh wind, and a good deal of that was floating below the surface. Then the wind shifted to the northwestward. That was at 9:40 in the morning, and it blew a little harder—in fact, we were getting what you might term a good strong breeze. We stayed with that garbage then until 3:00 P. M., when there was about five per cent. of the total amount dumped left, and that showed very much signs of sinking, and it was heading off to the eastward all the time before that wind, away from the Jersey shore, straight to sea. We dumped at 10:15 P. M. on March 1st and stayed with it until 3:00 P. M. on March 2nd. That would be 17 hours. And there was about two per cent. of that left when we returned to [1658] the city. There wasn't enough there to stay for. What was left was sinking so fast and was so thinned out that there wasn't enough there really to make it worth while to stay. From the way it was sinking it wouldn't last much longer, and we couldn't stay to follow each individual piece. This garbage moved about east by south. The direction in which it moved is the opposite direction to that of the Jersey shore at this point. All that I could observe of the dump moved in the same direction. I observed it for a period of 17 hours. [1659] None of it moved toward the west. That is true of the other two trips with the exception of the first, where it drifted to the southwestward to a point within 14 miles.

I have acted as pilot and master of vessels entering and leaving the Port of New York for a period of 22 years.

For Defendant—Frederick A. Gainard; direct.

In that period of time I took into or out of New York as master or pilot about 1,400 vessels. During that time I had occasion to take these boats, either as master or pilot, to points on the Atlantic Coast off of New York. There is a recognized course pursued by all vessels, coastal and foreign, coming either to New York or going from New York to points south of New York. Vessels going to southern take their departure [1660] from a point midway or close to Scotland Lightship, and steer south by west, half west, for Barnegat Lightship, which puts them 2½ miles off Seabright, Monmouth Beach, 2⅝ miles off Asbury Park, to a point 8 miles off Barnegat Lighthouse. That is the same course pursued by vessels coming to New York from points south. They steer north by east, half east, coming in over the same route. [1661] (Discussion by counsel.)

Mr. Crowe. I will just read it into the record. This is a paper bearing the caption: "Statement of entrance and clearance of vessels at the Port of New York," and then there is a sub-title "Months of December, 1928, and January, 1929." Then there is a column headed "Total number of vessels entered, foreign and coastwise, 1729.

"Number of such vessels entering from points south of New York, 1227."

And there is a second column: "Total number of vessels cleared, foreign and coastwise, 1757." "Number of such vessels clearing to points south of New York, 1,173." [1662] Then there is another heading: "Months of July and August, 1929.

"Total number of vessels entered, foreign and coastwise, 1,913."

Underneath that there is another heading: "Number of such vessels entering from points south of New York, 1,105."

In another column: "Total number of vessels cleared, foreign and coastwise, 1,892."

For Defendant—Frederick A. Gainard, direct.

"Number of such vessels clearing to points south of New York, 1,192." (Discussion of counsel.) (The paper referred to was marked "Defendant's Exhibit 4" and received in evidence.)

(Mr. Crowe. This statement, defendant's Exhibit 4, contains the following certification:

"The foregoing tabulation of the number of vessels [1663] entering and clearing at the Port of New York for the months indicated is true and correct, and was taken from the records on file in the office of the Collector of the Port of New York.

"Given under my hand and the seal of the Collector of the Port of New York this 24th day of March, 1930.

S. W. Hamilton
Deputy Collector, in Charge of
Marine Division."

Then there is the seal, "District of New York. Port of New York.")

As to the number of vessels that regularly, daily, enter and clear from the Port of New York and take this course to the south which I have just described [1664] I would say there would be about 20 each way. Some of them I have had men from my office on; others we are interested to know who is on them, so that we can keep a record in the office of how many arrive and depart as we go around and solicit the business of piloting afterwards. So we have a pretty good run and they will average about 20 a day in and out from the south. As to the practice of such boats with regard to the dumping of materials at sea, every one I have ever been on always dumped considerable material at sea. They run about 50 tons of 50-foot to [1665] the ton. (See page 1905 of record where the Master excluded this.) They start dumping from the time they leave a point to the south and east of the Lightship, or south and west of the Lightship, and start dump-

ing along until they finish all the refuse material gathered on the decks there during the stay in port, and also what is left around the galleys and cleaning out of the crew's quarters and so forth. These materials that were dumped as I have stated would be dunnage, wood, fruit, mattresses, pillows, shoes, old clothes, pieces of meat and the usual remains of what is left from the galley from different meals. I have seen plenty of electric light bulbs dumped and bottles, cans, and everything that you would call—what 50 or 60 people would consume in a week or ten days in ports as a housekeeping proposition to start with, and as a house cleaning proposition. Some of them start to dump right after they leave outside the harbor limits. Some of them don't start for an hour or two afterwards. It all depends on just the time of day of [1666] sailing. But they usually get rid of it as quick as possible before night if they are sailing. Or sometimes they start dumping that night. It is just according to when they leave. They dump as early as possible while on the route. This is the invariable practice of all of these vessels pursuing that course, I have followed them and seen them. That has been done by vessels of which I have been master and pilot. I have observed the same course with respect to other boats. Ships coming up—my observation is that ships coming from ports to the south, where they have completed discharge and are coming to New York to load, they clear up their holds and accumulate the stuff on deck and start dumping, stretching along the whole beach from Delaware Breakwater [1667] to New York, or from Baltimore to New York, either one of them, from Chesapeake Bay—I will qualify that; that is from Chesapeake Bay entrance to New York.

This course or lane of coast and foreign traffic vessels is inside the city garbage dumps. During the time there is a heavy sea or fog on the sea, a large number of these vessels slow down when they come to the Port of New York, or are approaching the Port of New York. Coming in from sea

we always slow down, and if we do see floating material coming along, we know we are approaching somewhere off a city out to sea, and we take a cast of the lead, and it gives us a pretty good idea where we are to proceed. I have seen heavy fogs where we have laid there for two days anchored off the lightship. That would be passenger vessels as well as freighters. When the fog cleared there would be 25 or 30, [1668] up as high as 50 vessels anchored there over night. Some of them anchor 24 hours, some of them 36 hours. During this period the garbage, refuse materials accumulated on board ship, are disposed of at sea, put right overboard.

As captain and master of vessels, I have observed stores, provisions, going aboard vessels while docked in New York. You usually requisition your stores when you arrive, have them put aboard the day after or the day before you sail. Meats, fruits, vegetables, fowls and so forth come down in crates from the market, and boxes and barrels. They are removed from these receptacles and the meat hung up and the fish—in fact, all the stores are supposed to be hung up in the different rooms of your ice box or put in and stored away, and the containers that they came in are left on deck and thrown over in a corner with the refuse. I have observed these containers, crates and barrels and the like, that were delivered on board ship. [1669] Invariably they would have the name stamped on it, and a good part of the time they would have a shipping tag nailed on with the name of the commission merchant or dealer from which it was bought tacked on to it. That would be the name of the concern in New York City from which these stores were purchased. And then after these stores were removed from these containers, these containers were placed out on the deck. When the ship got clear of the port and discharged the pilot and started on her way, they would throw it all over along with the rest of the stuff that had accumulated on deck.

For Defendant—Frederick A. Gainard, cross.

I summer in the State of New Jersey. I summer on top of the hill behind Elberon. I have done that about seven years now. I visit the Jersey Coast from [1670] Bradley Beach along to the Highlands. I have observed parked automobiles at various points along this line. I have often complained, with the rest of the folks down there, seeing cars parked along the boardwalk along at Long Branch, see them parked along the beach carrying foodstuffs with them, and when they get through with it they just throw it over the rail. I never hear of any of them getting caught or brought up for it, and that includes milk bottles, fruit, old papers, stuff that generally wrecks a place and makes it a bad place for swimming and bathing. This observation has extended over a period of years, about seven years. Winds and tides are elements that the mariner has to deal with constantly. The prevailing wind off the Jersey Coast [1671] is to the westward, westerly winds. They are off-shore winds.

On *cross examination.* The westerly winds prevail the whole year. There is no such thing as trade winds off the Jersey coast. [1672] I am not employed by the Moran Towing Company at the present time. I was not hired by the Morans to make this investigation. [1673] I took with me Captain H. J. Slayberry. I took Captain Charles Lawrence. I took Captain George A. Bergstrom. I did not take Captain R. F. Chester. Captain R. F. Chester has not been associated with me in this investigation. I have seen him during this investigation, but not on our trips. On those trips, on some or all of them, we put bottles and cans overboard to test the float in the gar- [1674] bage. We threw them overboard. We certainly did not go and gather them up again. We didn't go and gather any of those bottles and cans up because they were floating to the Jersey shore.

The first pilot's license I received was in—well, I can't tell you the exact date. It was back in 1911 or 1909,

somewhere in there. I couldn't tell you the exact date. [1675] The first company I was employed by was the White Oak Transporation Company. I had charge of my watch on her. The first company that I worked for in charge of a vessel as captain was the Long Leaf Yellow Pine Company. That was in 19—no, that is not the first people I ever worked for. The first people I worked for was the Gilbert people on sailing vessels. That was back in about 1909 or 1910. I was captain of a vessel in 1909 or '10. I made three trips in her. Pretty near six months. The name of the vessel was Rebecca J. Moulton, [1676] registered in New London, Connecticut. The next vessel I was captain of was William J. O'Brien in 1915. From 1909 or 1910 to 1915 I was mate and pilot. In 1915 I was captain again of the William J. O'Brien. I stayed in her for about—pretty near a year. She was registered from New York. The first trip we went to the Pacific coast, and the other trips we went between Jacksonville and New York. When I went to the Pacific coast we went through the Panama Canal. [1677] That was in 1915.

The next vessel I was captain of was the Munsono of the Munson Steamship Company, registered in New York, sailing from New York and Cuba. I was one trip on her. That was 1916. The next one was the Monares in 1917. That was for pretty near 18 months. It was a U. S. Government boat sailing from New York to points in France. That was trans-Atlantic. [1678] I was commanding officer of her. I was captain of the vessel. That was in 1917. I stayed in her till 1919. I left my last command in 1921. I haven't been in a vessel since then in command. I am now a coast pilot. I perform my duties on them from the time they leave the dock on some vessels, until they arrive at the dock in their port of destination, wherever they are going; others that are going along the coast and employ local harbor pilots, we take charge from the discharge of that pilot until the picking up of the next pilot. [1679] I am in the business of making investigations in

marine matters. I do investigate marine matters. These men were employed by me in that service: Slayberry, Lawrence and Bergstrom. [1680] Chester was never employed by me in this line of business. The last job I put Chester on was about six weeks ago, as a pilot. It was not in connection with this case. I can explain why, on January 30th, the scows went 20 miles to dump, when the requirements were only for eight miles. (Discussion of counsel.) The first dump at 21 miles I was proceeding under Mr. Crowe's direction that at the first favorable, strong easterly wind, I would make an investigation of the dump at 21 [1681] miles.

As to the proportion of this material on these several trips that I made that remained in suspension in the water below the surface, after the first hour I would say there was about—less than one per cent. below the surface. At the eighteenth hour what was left there would be 50 per cent. of what was left below the surface. I said that in this snow storm we were unable to distinguish our own garbage. We identified our own garbage because we were right in it. [1682] We were right in certain garbage that we knew what it was. We could see it and knew it, and we were alongside of it, and it didn't get out of our sight. By our own garbage I mean the garbage we were watching. At that time we could not keep in sight the entire area of garbage that came from those dumps. We could cover the whole area of the garbage dumped with searchlight with sufficient clearness to identify objects at night. That is breadth as well as length. The searchlight was on the wheel house of the tug. You could diffuse the light over quite an area. You could cover with that beam of light with sufficient clearness to distinguish objects an area about 50 foot in width. [1683] We could lower that searchlight right down along the tug's rail. With the searchlight in a stationary position, we could see to distinguish objects from our boat about a hundred feet.

For Defendant—Frederick A. Gainard, cross.

When I said there were 20 vessels a day that moved up and down the coast, I am taking them right along on an average from 1921 along. If you are coming right down to days, I have got the records in my office. There was about 20 vessels a day during February, 1930. As to the lines operating vessels during February, 1930, I can give you the biggest bulk of them. [**1684**] There was Ellerman and Bucknell Steamship Company, sailing between New York and points south, Philadelphia, Baltimore, Norfolk and the Canal. They have about seven vessels a month. [**1685**] (Discussion of counsel re question of vessels entered and clearing New York.)

After recess. FREDERICK A. GAINARD, [**1686**] on *cross examination.* One ship dumped 50 tons of garbage overboard approximately. That was an accumulation for whatever length they are in, 10 or 12 or 15 days in port. I know of at least three, four—I know ten offhand now that will be in New York for ten days or have been here for ten days. That occurs continually. They come in from one port and discharge cargo, [**1687**] go out, come back, finish, discharge, go in drydock and start to load. They do not always go in drydock when they come into the Port of New York, but most well regulated lines that have been off of the drydock nine months going on a long trip, usually do. I am not necessarily talking about vessels that are gone for nine months, three months, four months.

There were 64 people aboard on the ship that accumulated 50 tons of garbage in ten days. I can't say I know what the average accumulation per person is of garbage. When I said they accumulate garbage, now I am talking of accumulation in port, hold cleanings. It is so stated in the tes- [**1688**] timony. By cleaning of the holds I mean sweeping up of the holds of the remains of what was left of the cargo, the dirt, the dunnage. That consists of whatever the cargo consisted of. These vessels do not go out empty. They clean up the holds before they put in their

loads. They put the sweepings on deck. These vessels leave the Harbor of New York with 50 tons of garbage and rubbish on deck approximately. I couldn't say what proportion of that 50 tons is garbage. I wouldn't put any figure on it. I know that it is garbage and dirt [1689] sweepings of the boat, the forecastle. The sweep-up in the forecastle, the same as you would in any house, all the dirt, accumulated papers, rubbish, clothing, mattresses. I wouldn't say how long it is permitted to accumulate, papers and rubbish, on the floor before it is swept up. They clean the forecastle up every day. This is the sweepings of the forecastle every day and the rooms, quarters. What amount of the 50 tons that represents I wouldn't say. It is just thrown into a general pile. I never weighed the accumulation on the deck of vessels. I get my information that there is 50 tons judging from the amount of space it takes up, about 50 cubic feet to the ton. [1690] Fifty times 50, then, would represent the cubic feet of rubbish on the deck of a vessel; 2,500 cubic feet piled up on the deck of a vessel. They pile that on the fore decks, some on the after deck. They divide it between the fore deck and the after deck and the bridge deck. The size of the bridge deck is according to the size of the vessel and the type of the vessel. The bridge deck is not the bridge itself, along the pilot house. [1691] The bridge deck is the deck above the main deck. I have seen 2,500 cubic feet of garbage and rubbish on the decks of a vessel.

A garbage scow holds according to the size of the scow. Those that I saw hold about 1,400 tons. I am talking weight tons now. Before I was talking cubic tons. When I said 50 tons of garbage and rubbish on a boat I was talking of 50 foot to the ton. That is 2,240 pounds. [1692] The weight of garbage on a scow runs about 400 tons in the one scow.

As to this 50 tons that I have seen on a vessel, I wouldn't say how much of it was garbage.

Q. Well, was half of it garbage?

For Defendant—Frederick A. Gainard, cross.

A. No.

Q. Was a quarter of it garbage?

A. Now you are coming down—I wouldn't tell you a quarter or a half. It was mixed up. It took up that much space on deck.

I couldn't tell you what proportion of it was garbage. I have seen that pretty near every trip I go aboard a ship. I have seen it all the time, but I can't tell you how much is garbage. I wouldn't undertake to apportion it.

[1693] Q. Is there 10 per cent. of it garbage?

A. I told you I wouldn't undertake to say how many per cent.

Q. You wouldn't undertake to say?

A. It is pretty hard to tell, on account of the way it was put around on the deck. I couldn't tell you what it was from the way it was put on the deck.

Q. Do you know how much garbage—

A. I am trying to tell you that I couldn't tell you.

Q. All right. The answer is then you don't know? Is that it?

A. I didn't say that.

Mr. Crowe. He doesn't know the proportion.

The Witness. I don't know the proportion.

Mr. Crowe. He has answered at least three or four times.

All of these vessels, 20 a day each way, each carrying 50 tons of garbage and garbage and refuse which they dump in the ocean, boxes, crates, barrels and that stuff, they do not dump that in the navigable channel. They dump it at sea. They do not go out of the channel, out of their way to [1694] dump it. They dump it at sea, clear of the channel. You are out of the channel when you are out at sea. They do not go out of the lane, the sea lane, to dump it. They dump it in the sea lane within 2½ miles of the Jersey shore.

I spoke about seeing people throw their rubbish on the beaches. That was about every summer for the last six or

seven summers. I saw it last summer at Long Branch. I saw it pretty nearly every day I was there. Some weeks I would be down there two days; other [1695] weeks I was down there one day. I have seen it on two different Sundays. You are coming down to dates, and I don't know what dates. There was the Sunday following Decoration Day, whatever date that happened to be. It occurred just at the turn after you come from West Long Branch, right on the turn at the foot of Main Street, a little west of the foot. I saw them throw a couple of milk bottles on the beach that day and a couple of papers, bags with material in them, [1696] fruit that fell out when it struck the beach. I should judge the bag was what you would call a 5-pound bag. It had some fruit in it, it was skins and peelings and so forth. I saw them throw those on the beach. This occurred about 2:30 in the afternoon. Another time was the Sunday following that. That was going along between Monmouth Beach—between Seabright and the Highlands, for a short distance by that Coast Guard Station. [1697] I seen bags going over the rocks there, bags and bottles going over the rocks. I saw three bags and bottles thrown over the rocks. I seen some oranges coming out of the top of the bag where it opened in the air. I seen some orange skins. I couldn't say how many. That happened around half-past four. It occurred just to the southward of the Life Guard Station. It come out of an automobile ahead of me that was stopped. They got out of the car and walked to the rocks and threw it out. [1968] I could name several other instances, but I couldn't pin them down to that time. It happened every time I was on the beach. I saw it on Labor Day of 1929. I seen that down there at Elberon just to the—pretty nearly the foot of Link avenue, where they walk out—where the new houses are built out there. They threw a couple of bags and a newspaper containing remains of a meal, bread, fruit. I seen bread crumbs and half a crust of bread. I should say I was about 50 feet

away. [1699] I also saw fruit skins and milk bottles. It happened to be oranges the time you are pinning me down to, these special times it happened to be oranges and grapefruit, oranges and bananas. That was Labor Day at nine o'clock in the morning approximately. That was the remains of a meal. I don't know how many people were in that car. I only seen the one man come out of the car and throw it. I saw one man come out of the car and throw it. I can not name any other specific instances. I can't get down very close.

[1700] EDWARD P. GREENE. On *direct examination.* I live at 1001 St. Nicholas avenue, New York City. I am connected with the Department of Sanitation of the City of New York. I hold the position of Superintendent of Final Disposition. The Department of Sanitation came into existence on December 1, 1929. Prior to that I was in the Department of Street Cleaning. I was appointed Superintendent of Final Disposition for the Department of Street Cleaning on May 15, 1919. Prior to that I served in various other subor- [1701] dinate capacities in the city government for thirty-four years. I came in on September 29, 1894. I served under the old City of New York as it existed prior to the creation of Greater New York. The Bureau of Final Disposition has the supervision over the enforcement of all final disposition contracts, and for the final disposition of all material collected by the city, such as ashes, rubbish and garbage.

(Mr. Crowe. At this point I will offer in evidence a certified copy of local law Number 13 of the year 1929, which creates the Department of Sanitation of the City of New York.)

(The document referred to was received in evidence and marked "Defendant's Exhibit 5.") The refuse materials of the City of New York are not collected in one formal collection. [1702] They are collected

separately. There are three classes of materials, ashes, rubbish and garbage. The ashes are collected separately and the rubbish separately and the garbage separately. The Department of Sanitation—or the Department of Street Cleaning, its predecessor, never had any jurisdiction over or collected or disposed of the carcasses of dead animals. That is done by the Department of Health. The separate collection of these refuse materials to which I have just testified have been in vogue since 1895. The Department of Sanitation, or its predecessor the Department of Street Cleaning, does not collect all the garbage from all the buildings in the City of New York. We under the Department of Sanitation will not [1703] collect garbage from hotels, manufacturing buildings, railroad yards, or in fact any place where business is transacted simply for business; however, if they have one or two residences—where there is a residence that has one or two residents in that building, we will give them service providing the garbage will not exceed an ordinary standard ash can full each day. The City of New York has never disposed of finally the garbage collected—the garbage of hotels or these other buildings that I have described. They do not do so today. They never have.

And when these materials are collected by trucks and carts of the department, they are either taken to one of the waterfront dumps or to the incinerators or to land fills in the outlying territories of the various boroughs. Street sweepings and rubbish and refuse are deposited on scows. We have two different kinds of conveyances. We have what we call a deck scow, and we have what we call a sea dumper. [1704] All of the rubbish is either deposited upon the deck scows or taken to the incinerators and destroyed by incineration. That which is deposited upon deck scows is mostly taken to Riker's Island from the Borough of Manhattan and the Bronx, and to Flushing Meadows from the Borough of Brooklyn. These deck

scows do not go to sea. Most of the deck scows—all of the scows from the Borough of Manhattan and the Bronx are unloaded at Riker's Island in the East River. We have disposed of rubbish and street sweepings at other land fill. We dispose of rubbish at, as I said, Flushing Meadows and at the land fills in the northern part of the Bronx and the extreme outer end of the Borough of Brooklyn. We have disposed of some at points in Jersey and some many years ago, four or five years ago. [1705] We unloaded scows at Bayonne; we unloaded scows at Port Newark. We unloaded scows at other places over there, right above Port Newark—I think it was Newark City, right practically in Newark. This was ashes and rubbish. Garbage and clean ashes have been put in sea-going scows.

There was a period of time when no garbage was disposed of at sea by the City of New York. Prior to 1896, the garbage was all collected in one collection. It was all mixed together, ashes, rubbish and garbage, all mixed together. Part of it was deposited in fills, and a considerable amount of it was deposited at sea. In 1896, a change was made in this policy. The policy was made around—it was in the early part in 1896 when separation was begun. [1706] From the latter part of 1896 down to 1903, no garbage was sent to sea by the city. All garbage was disposed of by our reduction system at Barren Island. That was disposed of under contract entered into by the City of New York with the New York Sanitary Utilization Company. The contractor was compelled under his contract to furnish a sufficient plant, furnish transportation to take care of approximately 2,000 tons a day. The contractors furnished all scows at the various loading points, and also did all their own towing to and from their plant. The City of New York does not have any scows for the use of garbage.

[1707] In 1903 there was an interruption on this practice. For a short period of two or three months we were com-

pelled to transport garbage to sea, as, to the best of my recollection, there was a cave-in or fire at Barren Island, and due to the fact that the contractors were unable to handle the output, they did deposit garbage at sea during this period. After the plant was restored to activity, they went back to Barren Island again. There was no interruption at Barren Island, to the best of my recollection, until about 1918. From 1906 to 1918 no garbage was sent to sea by the City of New York.

In 1918, or 1917, the City of New York entered into a contract with contractors to dispose of all the garbage collected at their reduction plant located at Lake Island in the vicinity of Linoleumville, Staten Island. They operated continuously until the early part—until, I think, October, 1918, if I am not mistaken. Then they went into bankruptcy and failed. The City of New York was then compelled to seek ways and means [1708] of disposing of the garbage, and request was made upon the United States Government to permit the United States to dispose of this material at sea, which was granted. This contractor that had the contract in the year 1918 for the destruction of city garbage, abandoned its contract. About October 1, 1918, they abandoned their contract. The city tried to re-let that contract. We advertised to secure bids for the doing of the work, but at that time it was during the period of the war and we were unable to secure any offers for carrying on the work.

[1709] By reduction of garbage I mean that the garbage was taken to Barren Island, where it was disposed of by what they call the reduction system, putting it through a reduction plant in a big steam plant, and taking all the oils and fats and everything from it. It was a method of destroying the garbage so as to get the by-products. Those by-products were the oil, fats and fertilizer base and bone which the contractor made use of and sold at the available market. Prior to 1917 the city had to pay

money to the contractor; from 1917 on, the city received money for it.

[1710] After we had secured permission from the Government to go and dispose of this material at sea, the city authorities immediately got together and formed a committee consisting of the engineers of the various city departments, to devise some ways and means of disposing of the garbage other than by sea dumping. This committee was appointed by Mayor Hylan, and they held numerous meetings to ascertain which was the best method, either by reduction or by incineration, and after a year or so, after continuous study was made and after they investigated how the garbage was being disposed of in other cities in the United States, it was decided upon that incineration, complete incineration was the better method, and immediately steps were taken to construct incinerators in the Borough of Manhattan. Incineration differs from reduction in that incineration contemplates or brings about the total destruction of garbage without by-products. The committee that was appointed by the Mayor at that time held meetings off and on, to the best of my knowledge for over a year, and there was quite an argument pro and con relative to the method of reduction and relative to the method of incineration, and due to the fact of the vast difference of [1711] opinion between both parties, that retarded the city in its actions of getting these incinerators up quicker than what they did get them up.

There is a vast difference between a reduction plant and the present incinerating plant. Reduction takes care of only garbage. If the policy of reduction were to be pursued by the municipality, it would still require some other means of disposing of rubbish. The site for the plant and equipment would entirely depend upon whether or not the committee adopted the policy of destruction by reduction or incineration. At that time there was considerable argument about what size plants were to be con-

structed. Those in favor of the reduction wanted one plant. Ultimately [1712] it was decided upon to have incinerators which would not only destroy the garbage but also the rubbish. During the period immediately following the abandonment of the reduction contract in 1918, part of the garbage was sent to sea; part of it was being delivered to Barren Island under a temporary agreement made by the contractors of the Barren Island plant. That, however, only lasted three or four months. After that it all went to sea. (Discussion of counsel.)

[1713] The first incineration plant in the City of New York was located at 56th street, between 11th and 12th avenue. It is a 300-ton plant. That commenced to operate as an incineration plant on February 15, 1924. On July 15, 1921, the Board of Estimate and Apportionment of this city appropriated approximately five million dollars for acquisition of land and construction of incinerators. The first incineration plant was located at 56th street between 11th and 12th avenues. The capacity of that plant is 300 tons. However, we are averaging about 450 tons there. That plant has been continuously operated. [1714] It is operated for the entire 24 hours. The records of our Department show it will average about 450 tons a day of material incinerated. The next incineration plant was located at 139th street, between 5th and Madison avenue. Referring to that first incineration plant, I have figures upon the cost of the construction or erection of the plant. (Discussion of counsel.) [1715] The cost of the 56th street plant was $868,552, not including the cost of land. The second incineration plant located was [1716] at 139th street. We began operations on November 27, 1925, and it cost $985,153, not including the cost of land. The capacity of this plant is 330 tons. We average about 367 or 370 tons per day at that plant. We are in 24-hour operation there. That plant is now and has been ever since its opening, continuously operated for 24 hours a day. The next plant was erected by the

City of New York at 73rd and 74th street on Exeter avenue. We began operations there on October 1, 1928, and the cost of the plant was $1,158,149, not including the land. The capacity of that plant is 330 tons. Its average capacity is approximately 400 tons. That plant has been continuously operated ever since it started.

The City of New York selected a site for the construction of an incinerator at the foot of Rivington street [1717] and the East River over two years ago. The City was restrained from considering its operation, due to an injunction by the Courts. That was an injunction issued by the Supreme Court on the ground that where we intended to put the incinerator was marginal land, and some decision was rendered that marginal land had to be used for something in connection with water. There were two sites picked out in the Borough of the Bronx and there are two additional sites picked out in the Borough of Manhattan. I understand there are three sites picked out in the Borough of Richmond, and together with the nine incinerators in the Borough of Queens there are three additional sites picked out. We have five incinerators in the Borough of Brooklyn, and I understand two additional sites. An additional 500-ton plant to be erected. We have three incinerators located in the Borough of Manhattan. Those are the three about which I have testified. [1718] In regard to the Borough of Brooklyn, the City of New York pursued a different policy with respect to bringing about an incineration plant. The City of New York entered into a contract with a concern under the name of "Brooklyn Ash Removal Corporation" to dispose of all the material collected by the City of New York and delivered to their plants. There is a clause in their contract whereby they had to build, together with the two 100-ton plants which were then in operation, three 500-ton plants to take care of all the rubbish and all the garbage in the Borough of Brooklyn. These plants have been constructed and all garbage in the Borough of Brooklyn is

now being disposed of by incineration. No garbage from the Borough of Brooklyn has been sent to sea since that day. Since December 1, 1929, there has not been a pound of garbage transported from the Borough of Brooklyn to sea.

A site has been selected in the vicinity of 215th street in the Borough of Manhattan for the erection of an incinerator, [1719] and now I understand plans and specifications— (Discussion of counsel.) The Department of Street Cleaning didn't have the power to construct its own incinerator plants. All construction was done by the Department of Plant Construction. With reference to this 215th street plant, the plans and specifications were prepared, and the usual costs of advertising and letting, by the Department of Plant Construction. Prior to that there was a site selected on 206th street, and due to some difficulty, some law difficulties, the site had to be abandoned, which set us back another year or so, and for that reason we had to go to 215th street. The agitation for the creation of a distinct municipal agency having full and complete control of every [1720] phase of the work entering into garbage disposal commenced in this city on December 1, 1929. That is when the Department of Sanitation was established. It was probably a year before that that the proposal to establish such a department was agitated and discussed. It was taken up in the election prior to December 1st and voted on by the electorate. A bill was introduced by the administration [1721] in the Legislature in the spring of last year to accomplish that purpose. A bill was introduced creating the Department of Sanitation. It was passed by the State Legislature, voted upon by the people and— I haven't any recollection of that bill in the State Legislature. It was necessary for the local municipal assembly to legislate in the matter. The matter was taken up in Albany, and the Albany people, all the authorities, decided it was a matter for the city to decide upon, and sent it back to the municipal

assembly, and then they in turn passed a resolution drafting a bill which was sent back to Albany for the people to vote upon, which they voted on in November. The Department of [**1722**] Sanitation was created by this bill and went into operation on December 1, 1929.

The territorial jurisdiction of the old Department of Street Cleaning took in what they call the Borough of Manhattan, the Bronx, and Brooklyn. It took in all five boroughs of the greater city. They are now under one department. Prior to the creation of this department of sanitation, Richmond and Queens were under the jurisdiction of the Borough President of the respective boroughs. And now all of these functions with respect to final disposition of garbage and ashes and refuse are vested in the one department operating throughout the entire city. With respect to the Boroughs of Richmond and Queens, I have examined the records of the Department to ascertain whether they have sent any garbage to sea. I know from my own personal experience they never have.

[**1723**] In the Borough of Brooklyn there are three 500-tons and there are two 100-tons incinerators. In the Borough of Queens there are nine incinerators. They average from 100 to 270. The present method of disposal by the Borough of Richmond is by incineration at the present time. I have some figures taken from my department with respect to the quantities of garbage disposed of at sea. Prior to the construction of our first incinerators we disposed of approximately 190,000 cubic yards each month. At the present time we are disposing of approximately 52,000 cubic yards. That is an average quantity per month. The 190,000 was the average of [**1724**] any month, June, July or August, that is our peak. The 190,000 figure testified by me is for the period of the peak. The 52,000 cubic yards is for last month. That is the month of February. February or January are about the same. I don't believe there will be any increase in

that quantity in the present month or succeeding months of this year. Approximately 27% of the total garbage collection of the City of New York is disposed of by dumping at sea. There are other dumps located along the water front in the City of New York, other than the municipal dump. There is what we designate as private contractor dumps. As to our own dumps, each water front dump is—there is assigned an inspector, an assistant inspector and two board men. The [1725] inspector's duty is to supervise the entire operation of the dump, to inspect all material that is delivered to the dump, to see that there is no foreign material going into any certain vessel. For instance, we have very strict orders relative to the kind of material that goes into these sea dumpings. There are positive orders that all floating material, such as wood, crates, baskets, barrels, wooden boxes, must be positively kept out of these sea dumpings. There is nothing going into sea dumpers but just ashes and garbage. These men are on duty for the entire time, twenty-four hours a day. They work in 8-hour shifts. The City of New York has no supervision or control in any manner over the private dumps. They are not required to report to me or to any other branch of the city government. I would like to make a correction there. I believe that the Health Department has some little supervision over them in the way that they can control the ground around their dump.

There are two distinct kinds of sea-going scows. [1726] There is what is known as a bottom dumper and a side dumper. When the City of New York took over the disposal of its garbage in 1918, there was practically no dumper in use but the city had to go out and buy them from the contractor who had the contract for the final disposition of ashes and rubbish in the Borough of Manhattan who had failed at that time. The city went out and bought these six bottom dumpers. To eliminate complaints and to try to facilitate the work, we found out

that the bottom dumper did not give us the right satisfaction, did not perform the right kind of work, and the side dumper was constructed. By that I mean it was a vessel that would, when loaded, the gates would open from the sides, and when the gates are opened the weight of the material shoved the gates out, clear off, and then close right back again. With the bottom dumpers they threw what they called the "dogs" off the ratchet, the chain runs out and the gates drop down and the material went down through the bottom. We have 13 side dumpers now. [1727] We number them by letters. The side dumpers run from K to W, with the exception of I. We have no dumper I, and we have no dumper J. The side dumper is the best type, the most modern type of scow that has been devised for carrying garbage to sea. There is no other type of scow known to be available for this purpose to my knowledge. The side dumping scows of the City of New York are the only scows to be used for the disposal of garbage at sea. As to the capacity of a scow when fully loaded, we use the expression "yards." We don't go by tons. When we make our request to the supervisor of the harbor we request a permit for about 1,400 cubic yards, but our dumpers going to sea will average more like 1200 or 1300 cubic yards—more like 12 than 14. [1728] All of that material is not garbage. There is also ashes. About the same figure hold good for the bottom type of dumper.

On *cross examination.* We try to prohibit the deposit of any wood in any of the sea-going boats. It does not occur. I am positive of that. (Witness shown a newspaper article.) This article in the Sunday News for January 19, 1930, I never saw before. I never read this paper. [1729] (The paper referred to was marked "Plaintiff's Exhibit 339 for identification.") I do not know Dr. Harris. He is not the health officer of the City of New York. He was health officer of the City of New

York. I do not know whether he was health officer of the City of New York on July 10, 1926. I never saw the article from the New York Evening Post for Saturday, July 10, 1926. [1730] (The paper referred to was marked "Plaintiff's Exhibit 340 for identification.")

Q. You spoke of a time in 1918 when your contractor failed or defaulted. I have here a letter from Dr. Copeland, who was then health commissioner, according to the letter, dated August 8, 1918. Will you be kind enough to look at that and see if that properly describes the conditions which confronted you at that time? (Handing a paper to the witness.)

A. Part of it I have knowledge of; part of it I have not. I don't know anything about the city trying to get rid of the glycerin to the government, but I do know that we were in a position that we had to get rid of our garbage, and the only way to get rid of our garbage was to take it to sea.

I am familiar with the fact that a temporary permit was obtained—that is, on the representation that it would be temporary and not last long. I don't know how long it was going to last, but I know it was a temporary permit. The letter from Dr. Copeland, R. S. [1731] Copeland, to Commodore J. T. Smith was the beginning of the whole thing. The letter from A. B. McVeigh, Commissioner of the Department of Street Cleaning, dated August 17, 1918, to Commodore Smith, United States Navy, states the facts. The letter from Charles L. Kohler, Secretary of the Department of Health, to Commodore Smith, dated October 5, 1918, is practically the same as Commissioner McVeigh's letter at the time.

Referring to a letter of December 9, 1918, from A. B. McVeigh, Commissioner of the Street Cleaning Department, to Commodore James T. Smith, I have no knowledge of that letter. At that time a man named Stern was Superintendent of Final Disposition. As to a letter dated October 21, 1924, by George P. Nicholson, corporation

counsel of the City of New York, to Frederick M. [1732] Pierce, Secretary to the Governor, I would not have any knowledge of any letters from Commissioner Nicholson. As to the facts stated therein to the best of my knowledge on this dumper E, this dumper E met with an accident, and she had to deposit some of the material at sea. But at no time did dumper E have any material in there such as that letter complains of, heavy driftwood and all such material as that. We don't put any heavy wood in our dumpers.

The greater percentage of the garbage which is now dumped at sea comes from the Borough of the Bronx. Probably a fifth of the area in New York City is served by dumping at sea, [1733] a fifth of the greater city. Brooklyn, Queens and Richmond are entirely out of the question. They take care of all their own garbage. In the Borough of Manhattan we are now taking care of practically 90 per cent. of it. I could not tell you what portion, what streets or area in your city the garbage comes from. No one could tell you that. The docks on Manhattan Island from which garbage is dumped into the scows that go to sea are at 139th street and Harlem River, 72nd street and East River, and 52nd street and North River. They are the particular docks to take the overflow which we cannot handle at the incinerators and that all goes to sea. That doesn't necessarily come from the area adjacent to the docks. It all depends on conditions. We have got to be governed by conditions.

[1734] The law introduced in evidence was introduced in the early part of 1928, I believe. It was put in originally in 1928; then they sent it up to Albany and it came back again. I believe it was introduced sometime in 1928. I couldn't tell you the exact date. This act provides for the appointment of a Sanitary Commission. The commission has been appointed. There is two of the commissioners appointed. The third one has not been appointed yet. [1735] It didn't go into effect until December 1,

1929. Since then the membership has not been completed to the best of my knowledge.

That measure was introduced in the Board of Estimate and passed there, and then went to the Board of Aldermen, I believe. It required a referendum for approval. I was not familiar with the efforts made to pass that—to have that act approved. I have heard several men, including Mayor Walker, advocate the passage of the bill. I did not hear them refer to the fact that this suit was pending and that they had to get something done right away. [1736] I know Kenneth Allen. He is an engineer employed by the City of New York. I think he is engineer of the Board of Estimate and Apportionment. I don't know whether I have seen this article "How New York Handles Her Garbage and Rubbish Problem," by Kenneth Allen, in "The Consulting Engineer," a magazine called "Consulting Engineer" for the month of January, 1930. I have given Mr. Allen a lot of figures and data in the last several years. Some of them might be in here. (After examining the paper.) No, I haven't read this. I am not a sanitary engineer, but Mr. Allen gets a lot of his information from our department. I don't know whether the statements that he made in here were correct. If he got them from our department they would be correct. [1737] (The paper referred to was marked "Plaintiff's Exhibit 341 for identification.") I never heard of the report made by Carsons, Herring and Wennery on the collection and disposal of New York's garbage in 1907, to the Board of Estimate. I was in the employ of the City of New York continually since September, 1894. We now dump at sea, ashes and garbage. They are mixed when they go to sea at times. They are not mixed in a collection. They are on the boat. They are not invariably mixed on the scows but at times. [1738] I do not agree with quoted paragraph on page 241 of the book entitled "Collection and Disposal of Municipal Refuse" by Rudolph Herring and Samuel A. Greeley pertaining to New York

For Defendant—Edward P. Greene, cross.

City matters. The minute the tailboard of the vehicle that brings the garbage to the city dump passes the dump office, then it is my job to get rid of it; or at the incinerator, once it passes off the scales. No one has the contract now for dumping garbage at sea. We engage towboats to tow our own city-owned scows. We just charter tug boats to do the towing.

I spoke of the committee that was appointed by Mayor Hylan. That was in 1921. The purpose of that committee [1739] was to eliminate sea dumping, if possible. We were eliminating sea dumping because he had more or less of a promise to carry out with the United States Government. I never received any complaints about the garbage being dumped at sea. We never got complaints for dumping at sea. We did get a few complaints of garbage reaching the beaches. Those complaints came from different parts of Long Island. A few came from New Jersey.

Q. Do you remember this article—Dr. Harris at that time refers to complaints from the garbage—

A. I never saw it.

[1740] The emergency under which this sudden change of disposition occurred in 1918, that emergency continues to exist to a certain extent. As to how long it takes to build an incinerating plant, I am not a builder and I can't give you that information. I gave the dates there when they were authorized. That is under contract, under which they were compelled to build it. I do not know how long it takes to build one. It took about a year and a half to build those that I know about. It takes about a year and a half to build an incinerator from the time we start till the time we begin operations. From the time we start I mean the time we make a request for an appropriation to draw the plans and specifications. From the time we [1741] begin to build until it is completed, I imagine it should take probably a year. Remember these are big plants. We have built since

For Defendant—Edward P. Greene, cross.

1918 in Manhattan Island and the Bronx three plants; one 300-ton plant and two 320-ton plants. (Discussion of counsel.) [1742] I do not know what the ratables are this year of the City of Greater New York.

I spoke of 52,000 cubic yards being dumped at sea in the month of February. I also said before that the peak seasons were June, July, and August, for dumping garbage at sea. I know how much garbage was dumped at sea during last June, July, and August. In June there was 192,191 cubic yards. In July there was [1743] 168,896. In August there was 135,818. February, 52,000 tons is not normal. This is only what we have delivered to sea. We dumped in February, 1929, 100,579 cubic yards. In December, 1929 we dumped 51,412; and January, 1930, 52,313. December is our low month on dumping at sea, apparently, 1929, 51,000. The winter months are our bad months. That is the low months, December, January, February, March. That is because of the output. [1744] The output is smaller during that time. Yes, sir. There is an aggregate figure for the year that would be representative of the garbage dumped at sea. The Department of Records will show that. I could tell you in round figures. It averages about 120,000 cubic yards a month for the 12 months of the year. That is an average. At the present time there is about 27 per cent. of the garbage collected being deposited at sea. That applies to the 52,000 cubic yards for February. That would be 4,000 yards a day, and there is three yards to the ton.

Q. All right. Now we will make it in cubic yards. That was a little less than 2,000 yards a day?

A. Yes.

[1745] I do not think that 10,000 yards a day is the total accumulation during February of garbage. It wouldn't be anywhere near half of that. 52,000 yards during the month of February divided by 29 days represents less than 2,000 yards a day. That is right. This is 27 per

cent. of our total collection at the present time. I am talking in round figures. Don't hold me down to one or two hundred tons. That would be less than 10,000 yards a day that you collected in February, much less. That is the actual collection in February.

[1746] On *re-direct examination.* The Department of Sanitation is actually functioning and has been since the date of its organization. I mentioned an average monthly collection of garbage of 120,000 cubic yards per month. That was for 1929. That 120,000 yards included garbage from the Borough of Brooklyn. Since December 1st of this year, no garbage has gone to sea from the Borough of Brooklyn. Consequently, the figure of 120,000 cubic yards [1747] of garbage will no longer hold, February is one of the low months. I expect in a very short time it will be even a great deal less than that. The quantity of garbage that will go to sea will be continually reducing. Until such time as we get additional incinerators, the yardage, I doubt, will ever exceed 50,000 yards a month.

On *re-cross examination.* I am now talking about the peak. [1748] We had last summer as high as 192,000 cubic yards a month. Since that time, three 500-ton incinerators have been completed. 1,500 tons per day is the part that we are going to keep from going to sea. That is 45,000 tons a month of 30 days. There is a certain amount of that, 1,500 tons will be rubbish that is going to be destroyed. It is not [1749] all garbage. We don't send any rubbish to sea. But we are talking incineration now. Of the 1,500 tons that is to be destroyed by incineration, according to the contract, 75 per cent. of that must be garbage; 25 per cent. must be rubbish. Three-quarters, then, of 45,000 will be the amount of garbage that those incinerators will take care of. That is 32,000 tons. 32,000 tons, plus the 50 tons that I estimate is 82,000 tons.

For Defendant—Charles H. Lawrence, direct.

[1752] CHARLES H. LAWRENCE. On *direct examination.* I live at 7825 Fourth avenue, Brooklyn. I am a master mariner and coast pilot. I have pursued that profession for 27 years. I was one of the parties engaged by the City of New York to go to sea with Captain Gainard who testified yesterday. I observed the garbage after being dumped at sea. From my 27 years' experience and from the observation of the garbage on each of these three trips, the dumping of that garbage at any one of the three dumps did not interfere with navigation. [1753] I have never heard of trade winds on the Jersey Coast. The date of the first trip I made to sea in company with Captain Gainard and Captain Bergstrom was January 30th. We went out in the tugboat called the "Thomas Moran." It is a sea-going tug. We left New York City on the [1754] occasion of that trip at 2:15 P. M. of January 30th. We embarked on this tug at the Battery. On the occasion of this first inspection or investigation we went to the 20-mile dump. By that I mean 20 miles southeast by east of Scotland Lightship. The material contained in the scows comprising that tow was dumped at 6:55 A. M. That was the morning of January 31st. We observed it from that time, 6:55 in the morning, until 3 o'clock that afternoon. [1755] This is my signature; the report made by me (indicating). The last report, of course, according to the notes there, was made at 11:25 A. M. That is correct. So the garbage was under observation from the time of the dumping at 6:55 A. M. until 11:25 A. M. When we first started in, the wind was moderate east, northeast, but it turned into a strong northeast wind and set in with snow squalls in the afternoon. The maximum wind velocity, during the period from 6:55 to 11:25. I should say was about 25 miles an hour in [1756] the morning, possibly 40 miles an hour in the afternoon. I described the direction of the wind as being northeast. That is the direction toward the Jersey shore at this point. The 20-mile dump, I should

say, would be about opposite Long Branch. To be exact, it is between Long Branch and Asbury Park.

After 4½ hours not over 15% of the jetsam or floating material that remained on the surface of the water, or was cast on the surface of the water when the scows were dumped, remained afloat. [1757] In that period of time and with the wind blowing in the direction and with the velocity at which I have previously testified, the garbage material moved about 8 miles. Snow falling upon the sea will agitate it. In quite a heavy sea that was running at that time, the garbage was almost immediately separated after it was first dumped, and gradually with the sea breaking all the time it settled it, and, of course, any heavy material sank and the rest of the flotsam floated, but it broke it up very rapidly and separated it. As to the effect upon fruit rinds and skins, of course, there would be considerable, and it seemed to have the effect of pounding the oil out of the grapefruit rinds and orange peels and things of that description, and, of course, after the oil is beat out of them they have a tendency to get water logged and submerged. We discovered a [1758] great many of them down several feet below the surface. An agitated sea is bound to increase the action of the water in saturating the garbage material; the rougher the sea, the greater the saturation, and the sooner materials are submerged.

The date of the second trip was on February 1, 1930. On that trip I did not accompany Captain Gainard and the two surveyors who went out to survey. The next trip I attended was the third trip which went out there, which was on March the 1st. On this date we left the Battery on the tug "Susan Moran," which is a larger tug than the "Thomas Moran," also a sea-going tug, and we went out to the 8-mile. On this occasion there were six scows loaded with garbage which went out. One of them was towed by the Moran Towing Company and the other [1759] by the Cahill Towing Company, and these

tugs arrived out at the 8-mile limit and discharged their cargo at 10:15 P. M. on March 1st. (After examining papers.) The weather at that time—the wind was blowing a light breeze south, southeast, and the tide was ebb at the time of dumping the garbage. A period of time of almost 17 hours elapsed between the dumping and the termination of my observation. On this occasion, with the wind south, southeast, a smooth sea—it wasn't a rough sea at that time—the garbage didn't move very fast. It broke up and settled more slowly than the garbage on the previous trip when we had a heavy sea. And, of course, there was a great deal more of it. On this occasion there were six scows. The garbage mass slowly moved away. [1760] The wind shifted into the north on the next day. That day when it was first dumped the garbage slowly moved to the southward with the ebb tide, which had more effect on it than the tide would have on the 20-mile dump. The next morning, of course, the wind hauled into the northwest and then blew quite strong, and that would have a tendency, of course, to fetch the garbage off from the coast. With a strong northwest wind it moved away from the coast on that occasion. Westerly wind is the prevailing wind in the wintertime along the Jersey Coast. That is an offshore wind.

At the expiration of my observation on this occasion it would be the same percentage of garbage afloat. As I say, the whole amount—there was a great deal more garbage, but I am quite confident there wasn't over 10 per cent. of the entire flotsam when we left the garbage. [1761] There is a recognized course or route pursued by vessels entering or clearing from New York to or from points to the south. Going down the Gedney Channel or Ambrose Channel, which is the main ship channel now, and going to the Fairway Buoy, the course from Fairway Buoy to Barnegat Lightship, which is stationed 7½ miles off Barnegat, the course is south by west, one-

quarter west, 41½ miles. That course is in length 41½ miles, from the point where they turn out of Ambrose Channel from the Fairway Buoy to Barnegat Lightship. The distance between this lane or route pursued by south-going vessels and the Jersey shore is [1762] 2½ miles off Shrewsbury. There is a rock established out there. Taking a point south of the Atlantic Highlands, like Asbury Park, the distance between this traffic lane of vessels and the Jersey Coast is anywhere from 2½ to 3 miles. It gradually increases until it is 5 miles off Sea Girt. At Asbury Park is 2½ or 3 miles, and it gradually increases to 5 miles off Sea Girt. And then at Barnegat it is only 7½ miles off the beach. [1763] Based entirely upon my personal observation.

On the various ships that I have commanded, leaving the Port of New York, of course it is customary after we get outside of the channel to discharge all refuse, ashes and dirt that we may have accumulated during our stay in port, as we are not permitted to discharge or dump any rubbish or garbage or ashes or anything in inland waters. In the ships that I have commanded, which have all, with the exception of one or two, been coal burners, it is the ashes that accumulated in port, together with the garbage from the galley and the sweepings from the forecastle, storerooms, and the cleaning of the bilges and sweeping of the hold. [1764] (Discussion of counsel.) Of course, there is no standard for what amount of dirt is accumulated or how much old clothes or things of that kind. That varies. But there is always on a vessel's stay in port various commodities accumulated that have to be discharged after you go to sea. There is always more or less garbage from the galley, of course. There is always more or less ashes. You do not always sweep your holds, because it may be that you come up in ballast. It depends upon the condition. I could not say that you sweep your holds every time you come into port, because you do not, but very

often you do sweep them. If you do sweep them, particularly with the cleaning of your bilges, you take any substance that you find in your bilges, around [1765] your rose boxes, and it goes up and is deposited on deck, and after you get on the outside, as I say, the first thing before washing down the ship, which is one of the first things that you do when you get to sea, you discharge all the refuse and ashes or anything that you have on deck.

I have been present when stores have been put aboard these ocean-going vessels of which I have been pilot a great many times. All stores and provisions are put aboard in boxes, cases and barrels from ship chandlers, with the exception of rope and things like that. Your blocks and rope, they will probably be in packages, but your provisions, of course, they all come in cases, barrels and boxes. With respect to the meats when they arrive on board, they are unpacked and put in the ice box or the refrigerator, whichever you may happen to have. The same thing applies to fish. The containers are thrown on deck in the refuse heap ready to be thrown overboard when you get to sea. [1766] Usually these containers are marked with the ship chandler's name from whom you get the things, or the packing house or the commission merchant, or whoever you purchase these goods from. If the goods are purchased in New York City, they would very likely have the name of the seller, or possibly the person from whom he bought the goods, if he had not unpacked them. These containers, after the boat arrives on the high seas, are thrown overboard with the rest of the refuse. As to the vessels approaching New York, of course that depends a great deal on where they come from. If they come from a port close by you might possibly be sweeping your holds or cleaning your holds, but if you load cargo in New York, if you were coming in ballast from a far port, you would probably have that done. Of course, if you have any refuse, which you are

not apt to have at sea, you daily throw it overboard, but you generally clean up before you get into port. If you have anything, you get [1767] rid of it. That, of course, principally applies to ashes.

On *cross examination.* On the occasions when I was at sea watching garbage, I saw some of the materials floating below the surface. I was able to see it through a three or four feet thickness of water possibly. I have never made any previous observations of the dumping of garbage at sea. I did not put out any cans or bottles on either of the trips that I was along. By "pounding out the oil," I mean this: All vegetables, principally grapefruit and things of that description, the pounding of the sea does separate or cause the oil to evaporate, possibly you would say, from them and leave a kind of a slick on the water. I think that is what they call it. I think that part of the slick on the water comes from grape- [1768] fruit. After the oil, of the grapefruit is out, I think it has a tendency to become water-logged and sink.

I ascertained the distance that we drifted when we were watching the garbage by bearings. I took compass bearings of the Highlands and Ambrose Lightship, Scotland Lightship after we were at sea. We also took bearings during intervals that we were laying there in the garbage. We can determine distances by the compass by [1769] bearings. The change in your bearings gives you the distance. The direction in the bearing. You take one bearing and you will say that the light bears north. (Discussion.) I take a bearing the Highlands now, and it will be west. The Highlands over our compass will be west. In an hour or two hours afterwards it will be west by north. The difference between those two bearings [1770] will be the distance that I have drifted in that time. If you could keep your boat in the same position then the bearing would not change. It don't make any difference about your bow or your stern;

if the boat stays in the same position the bearing would not change. If you change the direction of the bow of your boat your compass absolutely doesn't change. We do not have a stationary compass. I said the difference between the two bearings is miles. The difference in the direction of the light that you are taking your bearing from. The direction of the light is determined from your position by your compass, if you want to get your posi- [1771] tion, your bearing. You measure distance by the difference in your bearing, the direction of the light. That all depends on how far on or off you are. At the point we were, it was possibly two miles to a point. I can't tell you exactly actually, unless you tell me how far you are off the light.

When this garbage speaking of the first occasion the garbage was dumped at 6:55 A. M., February 1, 1930, it was daylight, breaking daylight. You could see in the light at 6:55 A. M. [1772] five miles. We were 1,500 to 1,800 feet from the tugs when they dumped. We were abreast of the first scow when they started to dump, and then we dropped back to the second scow and then to the third scow. I think they tow on a 200-fathom hawser. We were 25 feet away from the scow when it dumped. This was a side dumper. When it dumped, we dropped back to the second scow. To the second scow we probably was 50 feet off, [1773] fifty feet from the side of the scow when she dumped.

When the dumping occurs, the garbage goes down alongside the scow. It moves two or three feet from the side of the scow at the dumping. It goes down in the water from the side of the scow. Possibly the inner side is 2 or 3 feet; the outside might be 15 feet.

Q. Then there is no part of the garbage more than 15 feet away from the scow when the scow is dumped? That is when it is completely empty? Is that right?

A. Oh, no, the scow keeps on going and leaves it.

For Defendant—Charles H. Lawrence, cross.

Q. All right, but how far does the garbage spread from the side of the scow or from the place where the scow [1774] was dumped?

A. When it is first dumped it don't go over 20 feet.

Q. Now, it goes 20 feet away? All right.

A. Are you talking about inside or outside of the dump? I can't tell you which side of the pile of the garbage you are asking about. If you want the inner side first, I will give it to you, 2 or 3 feet—say possibly 4. When a side dumper opens, this garbage slides down a decline out into the sea. When it goes out of that decline away from the barge, the inner side goes 2 or 3 feet. The garbage don't go anywhere. The side pocket holds it. It goes inside of the pocket. It doesn't go out of the pocket. The pockets are outside of the garbage as it goes out. I am talking about the scows that dumped this garbage at sea. The garbage [1775] slides down the sloping partition between that and the side. It goes out through the bottom of where the door drops from. (Discussion of counsel.) [1776] Don't misunderstand me. I don't mean it doesn't slide down—the moment it strikes the water it just stops; it doesn't expand immediately. There is a band of garbage in the water after the dumping has occurred of about 20 feet, possibly. There is one band on each side of the barge. They do not come together after the barge passes. The wake of the barge doesn't bring them together. I am sure of that. I watched them. They do not come together in the wake of the barge because the second barge follows along and goes through it. When the wake of the string of barges goes by, the last barge it doesn't bring them together. [1777] There may be a small eddy there, but nothing of any great amount. The two piles don't get any closer together than the width of the barge. The particles immediately began to separate. On the first occasion I should say that in 5 or 7 minutes it was all level with the water. As this separation occurred, the area expanded.

For Defendant—Charles H. Lawrence, cross.

[1778] The first time I watched this for 4½ hours. The garbage had been distributed at the end of my watch over an area of 2 to 3 miles. It was blowing strong northeast. There was quite a high sea. Our boat rocked and rolled. Towards the last it was snowing. At the end of the 4½ hours we had to leave [1779] because we couldn't see at all. At that time the garbage had practically disappeared. 15 per cent. of it remained.

On the second occasion there was no difference in the formation of the garbage after it came out of the scows. There was a very light wind. That is when we dumped. It took the mass to break up and gain the level of the water 10 or 15 minutes on that day. I watched it that day for 17 hours. At the end of five hours the garbage covered an area of two to three miles in the sea. At the end of 10 hours I should say it covered two miles. There was a great deal less of it. [1780] I can't tell you what area of the sea was occupied by any garbage at the end of ten hours. As to what area of the sea was occupied by any part of that dump at the end of 17 hours, I could only tell what we observed. I could only tell as to the part that we could find as we cruised around. We tried to keep in the midst of it, to the best of our ability.

I talked about boats of which I had charge, that dumped their garbage and so on ship lanes as I went out. [1781] The track, we will say. I traveled in the regular track of vessels, the most direct point between two given points is the track we take. All the vessels travel that way. That is where I dumped our garbage and refuse when I went out of port as soon as we got out of the limits of inland waters. The inland water limits are from the Highlands down to Scotland Lightship, from Ambrose crossing over to Rockaway. When I got outside of that, then we began to dump. [1782] (Discussion of counsel.) [1783] As to dumping the stuff coming in, I told you a while ago it depended on where you came from. If you came from some foreign port mostly you didn't dump at

all. Any place in the south you would be in that ship lane, from Barnegat. We are not talking about coming from across the ocean. Coming into New York I dump possibly at New Orleans. [1784] I dump wherever I leave from. If I leave from New York I dump as soon as I get to the Lightship; if I leave New Orleans I dump as soon as I get out of the south pass. (Discussion of counsel.) I have commanded ships that have sailed to the northward that had crews all the way from 32 to 367 men. The last ship I commanded that had 32 in the crew was the steamship MANTA. I owned and sailed the MANTA [1785] from October, 1928, to May, 1929. I was in the sulphur and crosstie trade between Galveston, Texas, and Jacksonville and Charleston, New York and Boston. On this particular ship I made one trip to the port of New York. I have not had a ship since that. The ship before that that I commanded was the PRINCESS MATOIKA. [1786] I commanded her between August, 1919, and May, 1920. She ran between New York, Porto Rico, Cristobal, New York. I made a trip on an average every 30 days to New York. She had a crew of 367. Thirty-nine officers. Our stay in New York at a trip was a week or ten days. We laid over a week or ten days in New York once a month on the average. That was a government vessel and I can't tell you just the exact day without getting my notes at home. This is back during the war time or just after the war. We came to New York every [1787] 30 days on an average and laid in New York a week or ten days. The boat before that was the ORIZABA.

These are various ships I commanded during the war, in the Navy. I can't give you the dates right offhand without getting my notes, but all between 1918 and 1920, that I commanded these various ships in the Navy. Between 1917 and 1920 I commanded four different ships. Now, I can't give you just exactly the date I was assigned from one ship to the other.

For Defendant—Charles H. Lawrence, re-direct—re-cross.

The Government did not dump the garbage of a crew of 300 and some, the accumulation of ten days, in the ship lane. [1788] Our ship dumped part of it, the accumulation of the last three or four days, possibly. It would be 25 or 30 tons. We would accumulate 25 or 30 tons in three days on that ship; garbage and peelings and one thing and another.

On *re-direct examination.* A mariner by taking a bearing upon one point and a bearing upon another point, or a lightship, can get cross bearings which will indicate his position in the sea. That is the only the way to get bearings except by observation of the sun or moon or stars. When I testified on cross examination with regard to locating our position by bearings, what I meant was getting a bearing on one point and a bearing on another [1789] point. And these cross bearings, where the two lines drawn from the point cross the bearings to our vessel would indicate the position we occupied. In addition to being captain and master of vessels, I have owned eight different steamships. The size or tonnage of those vessels was about 3,500 tons.

On *re-cross examination.* If you was moving in a direct line on your bearing you wouldn't change your bearing. [1790] You couldn't determine your distance on one bearing. You have got to have two bearings. We had two bearings. One bearing was—I just remember this as one of the bearings we took, for instance, as Ambrose Channel Lightship, a bearing north by west, and the Highlands Light at that particular time was bearing west by north. I have only told you about this one bearing. [1791] The Highlands Light was bearing west by north. That isn't close; that was the bearing. The bearing of the channel, Ambrose Channel, was north by west. If you want to know the various bearings, we will look it up. (After examining a paper.) Which trip do you want? [1792] (Discussion of counsel.) [1793] I

haven't got any record of the bearings on the first trip with me in court. I was not on the second trip. I have bearings on the third trip. On this occasion, when we dumped the garbage on the first day of March, at 10:15 P. M., the Highlands Light was bearing west by north, and Ambrose Channel Lightship was bearing north by west. [1794] At 3:00 P. M. on March 2nd, the garbage had drifted to a position so that the Ambrose Light Vessel was bearing west by north three-quarters, or north by west three-quarters, and the Highlands Light was bearing west by north three-quarters north. This is our bearing of the tug that we were on. That is the second observation I have got here. That was the last observation. All these observations were placed on the chart which we brought up, which we have got.

WILLIAM SCHROEDER, JR. [1795] On *direct examination.* I live at Leverich Towers, Brooklyn, New York. I am a physician and surgeon. I am licensed to practice in the State of New York. I hold an official position under the city government at the present time; Commissioner of Sanitation. I assumed office in that position on December 1, 1929. Prior to that I was connected with the city government as Commissioner of Hospitals of the City of New York. The Department of Sanitation was created by law and went into effect on the date of my appointment, December 1st. That department now has jurisdiction over the final disposition of ashes, garbage, rubbish, street sweepings. [1796] I am chairman of the Board of Sanitation.

I have formulated the policy, or the Commissioner has formulated a policy with respect to final disposition of garbage. The policy of the Department is to completely incinerate all rubbish and all garbage in the City of New York, and to dispose of all ashes in land fills. That is the policy so far as rubbish and garbage are concerned. On December 23rd my department presented to the Mayor,

with regard to incineration, a program for increasing the number of incinerators in the five boroughs as follows: Five 500-ton plants in Manhattan; four 500-ton plants in the Bronx; five 500-ton plants in Queens; five 500-ton plants in Brooklyn, and the reconstruction of two plants in Richmond [1797] which had old furnaces in them.

There are at present three incinerators in Manhattan, none in the Bronx, nine in Queens, five in Brooklyn, and three in Richmond. With respect to the incinerators that are projected for the future, I have got to answer that question a little generally instead of specifically.

As far as Manhattan is concerned, there is one site obtained at the present time for the construction of a plant at 215th street, and there is a site now under consideration and request for its obtaining on the lower East Side.

There is a site in the Bronx at Westchester Creek under condemnation, and there is a site at 152nd street in the Bronx obtained.

There is a site in Queens, Juniper Swamp, obtained, and a site at Douglaston under consideration.

The other sites have merely been requested in general and are now being surveyed by the engineers of the Department of Sanitation and the engineers of the other city departments necessary to cooperate or coordinate with my department to obtain those sites.

The engineers of my department in looking over the [1798] present plan, which covers the additional 19 incinerators in the four boroughs and the reconstruction of the two in Richmond, estimate that if we can begin plans or begin work in the acquisition of sites, the construction of plans and the building program as rapidly after that as is possible to follow; and that, assuming that we got action by June of this year for the completed program for incinerators and the garages that would be attached to these incinerators as part of the building program, they could be finished by June, 1934. With respect to ashes

and street sweepings which are now conveyed to sea, we have at the present time in our proposed plan the filling in of an area in Jamaica Bay, known as East Island, just off Barren Island, with the ashes from Manhattan and those that of necessity cannot be used on land fills in the Bronx, to be carted around in Jamaica Bay and used to fill that area; so that under the proposed plan there should be no dumping at sea of either ashes, garbage or rubbish.

With respect to ashes and rubbish, that will discontinue as soon as we commence to divert the material, those materials, to the land fills, and the garbage will decrease with the construction and operation of the incinerators. [1799] At periods between now and June 1, 1934, there will be incinerators completed, or sea walls completed, and a progressive lessening of the amount as incinerators are finished or the sea wall around East Island or in that area is completed and we can dump into that area. That by June 1, 1934, no material, ashes, garbage or refuse will be disposed of by the City of New York at sea is our estimate at the present time. That is barring unexpected delays that we cannot foresee now.

On *cross examination.* As to what greater assurance there is now than Mayor [1800] Hylan had in 1925, when he said all this would be done in three years, under the new law we have the assurance that we can now acquire property that he could not acquire without a great deal more difficulty. Previous to the new law, as I understand it, property could not be acquired by condemnation. I did not acquire it for the work that I did prior to that time. [1801] I do not know any reason why this incineration work was not begun in 1918 and completed within the four years after the awards. I do not know any reason why it could have been done. I took office the first of December and I have absolutely no knowledge before that time. I do not make the same answer now

with respect to our program both ways as I did to Mr. Crowe. I am in office now. I was not prior [1802] to the first of December. It is physically possible to complete this job by June, 1934. That is as soon as it is physically possible to do the completed job. I am as sure as positive as my engineers can be.

RICHARD F. COLLETON. On *direct examination.* I live at 1664 Kimball street, Brooklyn, New York. I am connected with the City of New York, [1803] in the Department of Sanitation. I am a special inspector. Since the first of March, I have been assigned by the Commissioner of the Bureau of Street Cleaning to the corporation counsel's office. I can tell the location in the Borough of Manhattan of the various private dumps on the water front. One is at the foot of Roosevelt street, foot of East 9th street and the East River. That is O'Brien Brothers dump. One is at the foot of East 9th street, East River; Bouker Contracting Company.

Foot of East 11th street, Bouker Contracting Company.

Foot of East 32nd street, O'Brien Brothers Contracting Company.

[1804] Foot of East 62nd street, East River, O'Brien Brothers Contracting Company.

Foot of East 91st street, East River, Bouker Contracting Company.

Foot of Canal street, North River, Henry Steers Contracting Company.

Foot of Gansevort street, O'Brien Brothers Contracting Company.

Foot of West 30th street, North River, O'Brien Brothers Contracting Company.

Foot of West 51st street, North River, O'Brien Brothers Contracting Company.

Foot of West 54th street, North River, Bouker Contracting Company.

For Defendant—Richard F. Colleton, direct.

Foot of West 96th street, North River, Bouker Contracting Company. All of these dumps and locations are private dumps and not municipal dumps.

I have by your direction visited these private dumps since my assignment, beginning the month of March. [1805] March 3, 1930, I started out to investigate the classes of material received and deposited on private dump scows going to sea at the various points in the Borough of Manhattan. On that date I visited East 11th street and North River, and I observed Bouker's dumper 94-H, and during my period of time there I observed and witnessed ten loads of dirt and wood mixed being deposited in dumper 94-H. These private dump contractors have specific systems of marking for their respective scows. All of Bouker's sea-going dumpers are lettered and numbered in so far as they run, like 94-H, 81-H, Number 9-H, 77-H, and so on. With respect to the sea-going scows of the O'Brien Contracting Company they are all named. For instance, SEA COW, SEA DOG, SEA QUEEN, SEASHORE, SEA BREEZE. They are a name that contains the word "Sea" as a sort of a prefix to some other term, Seashore, [1806] Sea Dog. On March 6th I visited a dumper that I omitted in my first outline of the private dumps of New York. This private dump belongs to Mulligan. That is located at West 39th street and North River. On March 6, 1930, I visited Mulligan's dump and I observed two loads of rubbish and wood being deposited in Mulligan's dumper Number 3. That rubbish consisted of paper, rags, sawdust, wood, barrel staves and boxes, broken boxes.

On March 7th I again visited Bouker's dump at the foot of East 11th street and remained there for quite some time, and I observed during my time there 25 loads of dirt and wood being deposited in dumper 16-H. The wood consisted of pieces of timber, planking, lath and boards, ranging from about 2 feet up to 10 feet long.

For Defendant—Richard F. Colleton, direct.

On March 8th I again visited the West Side Mulligan's dump and I observed one load of dirt and wood being deposited [1807] in dumper Number 3. The wood consisted of a large quantity of lath and brick and dirt in this particular load.

Also, on March 8th, I visited Bouker's dump at the foot of West 54th street, and I observed one load of rubbish and cork being deposited in dumper 94-H. This rubbish consisted of paper, milk bottle caps and corks. On March 10, 1930, I visited the Roosevelt street dump, O'Brien's dump, and I observed one load of rubbish, straw and wood being deposited in the scow SEA DUCK. It consisted of paper boxes, papers and bottles. There were ketchup bottles, tomato bottles—rather, ketchup bottles and Worcestershire sauce bottles and Mayonnaise bottles. This was at the O'Brien dump at Roosevelt street on March 10th. [1808] Also on March 10th at Bouker's dump at the foot of East 91st street and the East River I observed a quantity of rubbish, sawdust, tin cans, in dumper 75-H.

On March 12th I again visited the Bouker dump at the foot of East 11th street. There were 40 loads of dirt and wood deposited in dumper A-109. That was on March 12th. The number of that is A-109. On the same date at East 62nd street, O'Brien's dump, dumper SEA KING, I observed one load of beer hocks being deposited in dumper SEA KING, beer hocks and rubbish. The rubbish consisted of paper, bills, envelopes. On March 13th, at West 30th street, O'Brien's dump, six loads of dirt and wood was deposited in dumper SEA FISH. The wood consisted of lath and timber, pieces of 2 by 4, apparently from the destruction—[1809] The size of the wood was two, four and six foot long, ranging from two up to six feet. March 13th, three loads of brick and wood deposited in Mulligan's dumper Number 3 at the foot of West 39th street and North River.

On March 13th at Bouker's dump at West 54th street, one load of rubbish in dumper 77-H. This rubbish con-

sisted of milk bottle caps, corks, bills, bottle covers, paper bottle covers. At this time I took specimens of the milk bottle tops. I took a quantity out, I would say about a couple of pounds of them, if they go by weight—a quantity of them anyhow for evidence. I took them out and brought them over to one of our plants and put them away securely until I was ready to go down and report back to the corporation counsel's office. [1810] I turned them over to the corporation counsellor Crowe, with the report of where I found them, and at the time I found them. Those are the bags I turned over. (Indicating material in the bags.) This is the material that I removed from the dumper. On that day, all of this material (a quantity of milk bottle covers and caps taken from the paper bags.) The corporation counsel produces from his custody the materials, paper milk bottle covers and paper milk bottle caps delivered into his custody by the witness, Inspector Colleton. The milk bottle covers are circular, semi-corrugated paper or pasteboard, pliable pasteboard material.

[1811] Mr. Crowe. Containing the name of Sheffield Farms, Inc. "Grade A pasteurized milk. 527 West 125th street. Processed 12 midnight, 12 noon, Sunday." And in red ink they contain the name of "Select."

Another one of the same milk bottle covers containing the same information as is indicated in the case of the former, with the exception that the point of pasteurization is given as Grand Gorge, N. Y.

Among these pasteboard corrugated milk bottle covers is one yellow in color, bearing the name "Sheffield Farms Company, Inc. Certified milk. Shipped Sunday. Bottled at Lime Ridge Farm, Poughquag, N. Y."

Another one for Lime Ridge.

Another certified milk bottle cover containing the same information as that contained on the others, with the exception that this cap indicates "Bottled at Pawling Farm, Pawling, N. Y."

For Defendant—Richard F. Colleton, direct.

Another milk bottle cover, yellow in color, "Certified milk," containing the same information as is printed upon the other certified milk bottle covers, with the exception that it contains "Bottled at Pompton Farms, Pompton Plains, N. J."

The milk bottle cap covers are circular in shape, about an inch and a half in diameter, and contain printed on one side the name "Sheffield" on the top side; on the lower side [**1812**] a circle and in the middle "Grade B Milk. Pasteurized at 524 West 57th street, N. Y., Monday."

Another number contain the printed matter: "Sheffield Farms Company, Inc. Pasteurized milk."

Among the milk bottle cap covers is another number containing the following printed matter thereon: "Pompton Farm. To be used"—then a blank space—"Monday. Pompton Plains, N. J."

Another number of these milk bottle caps contains the printed matter "Pawling Farm. To be used Monday. Pawling, N. Y."

Among this same refuse matter are printed memorandum forms of Sheffield Farms Company, Inc., special delivery dated March, blank. Then there is a name, "1 X 3 R." Then there is an indecipherable name at the bottom of this slip.

Another paper among this batch is blue in color, printed "Sheffield Farms Company, Inc., special delivery." Date, "March 16, 1930." The date is written in. There is printed on the slip what looks like a slip number "E 47658." This slip seems to be addressed or to refer to a party by the name of Runckle, apartment number 7. That is the material that was found by me in this dumper which I have just testified.

[**1813**] On March 14th I visited Bouker's dump at the foot of East 11th street and East River and I observed 26 loads of dirt and wood being deposited in dumper 72-H. On March 15th I visited West 30th street dump, O'Brien's dump, and observed one load of dirt and wood

being deposited in dumper "Sea Duck"; one load of dirt and wood deposited in Mulligan's dumper No. 2 at the foot of West 39th street, North River; one load of dirt and a quantity of cans and wood deposited in Bouker's dumper 77-H at West 54th street, North River.

On March 17, 1930, 12 loads of dirt and wood deposited on Bouker's dumpers 9-H and 81-H at the foot of East 11th street, East River. I believe there was a photograph taken of that dumper at that time. I observed a large piece of timber projecting out from one of the loaded pockets, and I called our office and had Mr. Pierson of the engineering bureau come up with a camera and take a photo of this particular dumper with this particular load. I met Mr. Pierson. He took a picture [**1814**] in my presence. This is the picture I saw taken by Mr. Pierson. (The photograph was received in evidence and marked "Defendant's Exhibit 6.") Referring to Defendant's Exhibit No. 6 the materials shown in that picture are dirt, wood and tin cans. This object that seems to be projecting outward from the top of that mound of material is a piece of timber. [**1815**] It is a piece of timber about 10 feet long. I judge it is 4 by 8, an extra large piece of timber. These objects or materials on the side of that heap at what appears to be the bow end of that scow are tin cans. I would say they are cans that vegetable matter came in, such as tomato cans, milk cans, salmon cans, sardine cans. I mean condensed milk cans, evaporated milk.

On March 18th, O'Brien's dump, West 30th street, one load of dirt and wood deposited in dumper "Sea Dog," wood consisting of lath and small pieces of two by fours. That is all on the 18th.

On March 19th, Bouker's dump, foot of East 11th street, 35 loads of dirt and wood deposited in dumpers 77-H and 72-H. [**1816**] The wood consisted of timber, lath, boards and planks.

For Defendant—Richard F. Colleton, direct.

On March 20th, Bouker's dump, West 54th street, North River, one load of wood, rubbish, bottle caps in dumper 16-H. Also a quantity of garbage, one sack of onions intact. By "intact" I mean in the bag, unable to get released unless the bag was opened. A quantity of grape skins, bottle caps, pie powder filling, scallops, bottles and corks. When I discovered this material I telephoned your office. I requested you to send to me for assistance the two other men who were assigned on this work. They were Officer Kelly and Officer Greenwald. They arrived there. They saw these materials. [1817] We in turn went aboard of the dumper and removed a quantity of grape skins, bottle caps, pie powder filling, scallops, bottles and a piece of cork and a sack of onions. I have those materials with me today and if they are not here they are in the storehouse. The sack of onions is in the warehouse.

On March 21st, Roosevelt street dump, O'Brien's dump. One load of paper cartons and one load of wood consisting of broken barrels, deposited in dumper SEA DOG.

March 22, one load of dirt and sawdust deposited in Mulligan's dumper No. 2 at West 39th street, North River.

March 24, Bouker's dump, foot of East 11th street, four loads of dirt and wood deposited in dumper 78-H.

March 25, everything along the line was perfect. No mixed materials being received by the private dumps. I was present when Mr. Pierson took a picture at East 11th street on March 14th. [1818] That picture was taken by Mr. Pierson of the engineering bureau, Department of Sanitation. That is a true and correct representation of the objects depicted in that picture. (The photograph referred to was received in evidence and marked "Defendant's Exhibit 7.")

Referring to Defendant's Exhibit 7, the type of scow shown in that picture is a sea-going dumper. In the testimony I have given as to the various scows, at the private dumps in which I have seen all these materials dumped,

For Defendant—Richard F. Colleton, direct.

they were all sea-going dumpers. In every case the scow in which I saw the [1819] material dumped, or in which it was dumped at the time of my visit, was a sea-going scow of a private concern. Referring to Defendant's Exhibit No. 7 the materials indicated in the deposit contained on the scow shown in that picture are dirt, brick, wood and tin cans, lath and plaster. That pocket of the scow which is at the extreme left-hand side of the picture, almost immediately above the designation on the side "81-H" contains tin cans (indicating). That is tin cans in that pocket, plaster and lath. I would say tomato cans. There were milk cans, tomato cans, salmon cans, peas and beans. [1820] Right there (indicating) is a salmon can. Right in that pocket there. They are right in here. The salmon label is red. It doesn't show in the picture. This object here (indicating) is a tomato can. I testified to finding what I call cork on some one of the dates. (Indicating a piece of cork.) That is a small sample. [1821] During the testimony this morning I testified to having found garbage in one of the private dumpers along the waterfront of the City of New York. That was the West 54th street dump of the Bouker Contracting Company on March 20th. This is a sack of onions. It was broken by taking it out of the boat. [1822] It was intact in the dumper. It contains what appears to be a 50-pound burlap bag of onions that have commenced to sprout, three grapefruit rinds, a quantity of tea balls, scallops (marshmallows), two boxes containing material, the label on it reading "Good luck. For use with eggs to make lemon pie. Good Luck Food Company, Inc., Rochester, New York. Certified products. Net weight, 4½ ounces."

Three pieces of cork, about 6 inches long, 3 or 4 inches in width, 2 inches in depth. That is a bottle that was in the pocket with a number of other bottles. We broke the other bottles while taking them out. It is a bottle

containing some liquid material with [1823] a metal cork or stopper.

ARTHUR H. GREENWALD. On *direct examination.* I am a member of the Metropolitan Police Force, Shield Number 13703, 9th Precinct. I am a patrolman. I was assigned to special duty at the private dump located at the foot of East 11th street and East River on March 17th. [1824] I remained there daily until the 24th, March 24th. I observed the materials carted to and deposited in the private dump. On March 17th, at about 8.30 A. M. I observed a truck marked "Dimpiero, truck number 2," with one large piece of timber and several small pieces of wood. It went down on the East 11th street dump operated by the Bouker Contracting Company, and was dumped into barge 81-H.

At 8:55 I observed another truck owned by the same people, truck number 6, with some materials, lath, small boards, and it was dumped into the same barge.

At 9:05 I observed another truck owned by the same company with one large joist four by four, about six foot long. It was dumped on barge 9-H.

At about 9:30 I observed a horse-drawn vehicle, two horse-drawn vehicles, go down on the dump at East 11th street and deposit in dumper 9-H a load of wire mesh, a large piece of sheet metal with lath and timber and some plaster.

At about 10 o'clock I observed another horse-drawn truck owned by L. Herman, 554 Grant street, who deposited in barge 9-H some building material, wood, lath and plaster, and also one old door.

About 1:20 P. M. I noticed a truck owned by H. Dimpiero, truck number 2, with a load of tin and wood and dirt which was deposited in barge 9-H.

At about 2:50 P.M. there was a horse-drawn truck owned by M. Hochberg, of 209 East 7th street, went down on the dump and deposited in dumper barge 9-H, one

large door panel and two large sheets of tin about 6 by 2, 6 foot by 2 foot, with some plaster and lath.

On March 18th I observed a truck owned by M. Dimpiero, truck number 14, with some wood and tin and dirt on it, deposited on barge 72-H. That was at 8:15 P. M., and at 8:45 P. M. I observed another truck owned by the same people with some wood and wire mesh and dirt deposited on barge 95-H.

At 9:10 I observed another truck, truck number 12, with some wood, wire mesh and dirt, deposited on barge 95-H.

At 9:45 A. M. I observed truck number 14 of the same company with some wood and tin and dirt deposited on barge 95-H.

At 10:10 A. M. I observed a truck, a horse-drawn truck, owned by H. Edelstein, truck number 12, with some plaster and wood, deposited on barge 95-H.

At 12:20 I observed a horse-drawn truck owned by [1826] Wordinger Brothers of 103 Willard street, with a load of plaster, wood, tin, one large copper wash boiler and ten lengths of house pipe, leader pipe from the roof. The leaders were made of tin, galvanized sheets. That was deposited on barge 95-H.

At 1:00 P. M. I observed a truck owned by M. Hochberger with one large tin counter, one water cooler, and a quantity of pots and pans deposited on barge 81-H.

At 1:30 P. M. I observed a truck owned by H. Trinckler, 275 Stanton street, with one large load of tin and wood, deposited on barge 81-H.

At 3:15 there was a truck owned by M. Dimpiero, truck number 20, with a large load of wood, tin and dirt.

At 3:40 a truck owned by the same people, truck number 14, with another large load of wood, tin and dirt, deposited on barge 81-H.

On March 19th, I observed another truck owned by Dimpiero with a large load of tin and wood and dirt, at 8:15 in the morning, deposited on barge 79-H.

For Defendant—Arthur H. Greenwald, direct.

At 9:00 o'clock I observed a truck owned by H. Trinckler of 275 Stanton street, with a load of oilcloth, plaster and wood, deposited on barge 79-H.

At 9:45 I observed a truck owned by M. Dimpiero, truck number 10 and truck number 14, with a large load of [1827] wood, tin and dirt, deposited on barge 95-H.

At 10:50 A. M. I observed a truck, truck number 20, M. Dimpiero, with a large load of wood and dirt, deposited on barge 95-H. That was on the same date. At 11:05 on the 19th I observed a horse-drawn truck, owned by Joe Farcas of 54 Louis street, with a load of lath, plaster and rubbish, with one large bedspring. The rubbish consisted of dirt, lath, scraps of wood, shavings, tin cans. The cans were tomato cans, milk cans, condensed milk cans, evaporated milk cans, and one 5-gallon can that was wrapped in brown paper. I couldn't see just what was in the can, and one bedspring, deposited on 95-H. It appeared to be a day bed spring. It was about six foot long and three foot wide.

[1828] At 11:20 I saw a truck of M. Dimpiero, truck number 12, with a load of tin, wood and dirt, deposited on barge 95-H.

At 11:30 A. M. I observed another truck owned by the same company, truck number 2, with a load of lath, wood and brick, deposited on barge 95-H.

At 11:45 I observed a horse drawn truck owned by T. Cunningham, 613 East 15th street, with a load of rubbish, harness and lath, which was deposited on barge 95-H.

At 12:30 P. M. I observed a truck owned by Wordinger Brothers, 103 Willard street, New York, deposit on barge 95-H, some tin cans, rubbish, plaster, harness, wood and dirt. It was harness, horse harness, leather harness. They had an old collar on there, a horse collar and parts of a bridle and one trace. That is about all I remember.

At 1:10 P. M. I observed a truck number 8, M. Dimpiero, with a load of tin, wood, dirt, deposited on barge 95-H.

For Defendant—Arthur H. Greenwald, direct.

At 1:30, truck number 12 with a load of tin, wood and dirt on barge 95-H.

At 1:35, truck number 2 with a load of lath, plaster, [1829] and tin and dirt deposited on barge 95-H.

At 1:50, truck owned by the same people, truck number 8, with a load of wood and dirt, deposited on barge 95-H.

At 3:15 I observed a truck owned by M. Dimpiero, truck number 8, with a large load of tin, wood and dirt, deposited on barge 72-H.

At 3:25 I observed a truck owned by the same people, truck number 4, with a load of iron pipe, lath and plaster and dirt, deposited on barge 72-H.

At 3:45 I observed a truck number 10, with a load of tin, wood and dirt, deposited on barge 72-H.

On March 20th, at 8:15 A. M. I observed a truck owned by H. Trinckler of 275 Stanton street, with a load of plaster and wood, deposited on barge 70-H.

At 8:45 I observed a truck owned by I. Miller, truck number 12, of 406 West 38th street, with a load of wood, dirt and brick, deposited on barge 70-H.

At 1:15 P. M. I went to West 54th street. At 1:15 P. M. I received a telephone call from Inspector Colleton and was called, together with my partner, Patrolman Kelly, to the North River and West 54th street. We met Inspector Colleton of the D. S. C., Department of Street Cleaning, and proceeded down on a dock operated by Bouker Contracting Company at West 54th street and North River. We went aboard barge 16-H and observed in the second scow pocket one large bag of white [1830] onions, a quantity of grapefruit skins and a quantity of milk bottle caps, marked "Sheffield Farms," with a lot of cork and other bottles and tin cans. Also a few grapefruit skins, banana peels and other skins.

On March 21st, at East River and East 11th street, I observed truck Number 34 of the Rosso-Gull Company with a large load of timber and dirt deposited on barge 9-H. It was two pieces of timber. One piece was about

8 foot long and the other piece was about 10 foot long. It looked to be about 4 inches thick and about 8 inches wide—8 to 10 inches wide.

At 8:40 A. M. I observed a truck owned by the Gull Company truck number 18, with a load of tin, wood and dirt, deposited on barge 9-H.

At 11:05 I observed a truck owned by H. Trinckler, 275 Stanton street, with a load of cardboard, plaster, wood, and rubbish, deposited on barge 9-H. The rubbish consisted of small sticks, dirt, like sweepings out of a store where they had been cleaning up, fixing up; a lot of paper and magazines, old magazines, old newspapers, a general cleaning up of the store, fixing it over.

At 2:15 P. M. I observed a truck marked "Indiana Truck- [1831] ing Company," truck number 4, with one load of barrel staves, a small quantity of tin, one large soapstone sink, deposited on barge 9-H.

On March 22nd, I observed a truck, M. Dimpiero, truck number 8, at 8:20 A. M. deposited on barge 95-H, some tin and wood.

At 9:00 A. M. I observed a truck, Gull Trucking Company, truck number 26, with a load of tin, wood and dirt, deposit on barge 95-H.

At 9:45 A. M. I observed a truck, M. Dimpiero, truck number 14, with one large channel iron about 4 foot long and some tin and wood, deposited on barge 95-H.

At 10:45 A. M. I observed another truck of M. Dimpiero, truck number 10, with a load of tin, dirt and wood, deposited on barge 72-H.

On March 24th I observed a truck, M. Dimpiero, truck number 18, deposit some wood, tin and dirt on barge 81-H. Again I observed truck number 4 with some wood, tin and dirt deposit on barge 81-H.

I observed a horse-drawn truck owned by Wordinger Brothers, truck number 5, with a load of wood and plaster and tin deposited on barge 81-H. I had a conversation

with the men driving these trucks and wagons and depositing this material. [1833] (Discussion of counsel.)

I have been a member of the police force since July 1, 1928. I have been connected with the Ninth Precinct since September 17, 1928. I have a regular post in the vicinity of this dump. [1834] It is from East 8th street, including East 9th street, East 10th street, and East 11th street, and Sigo avenue east. I cover all docks from East State street to East 11th street, inclusive. This Bouker dump to which my previous testimony has related is on that post. Prior to my special assignment to this dump, I have observed wagons carrying materials to that dump, and of the same general character to that which I have here testified specifically on the dates mentioned.

On *cross examination.* This bed spring that I saw, was all metal. The onions and vegetable collection that I saw is the same one that was exhibited here in court, and the other witnesses testified to.

[1835] FRANK KELLY. On *direct examination.* I am a member of the New York Police Force, shield 970, 9th Precinct. On March 17, 1930, I was specially detailed to watch materials deposited in a private dump on the East River. That was at the foot of East 11th street and East River, and 9th street and East River, The Bouker Contracting Company. At about 1:20 P. M. I observed truck No. 8 owned by the Dimpiero Trucking Company, loaded with a large quantity of tin, two by fours—[1836] (Discussion of counsel.) I only got two others that he hasn't got here. At 2:30 P. M. on March 17th I observed two horses drawing a truck through East 11th street towards the river, and watched them go up the run and dump into barge 72-H of the Bouker Contracting Company a large quantity of cork and stone.

On March 19th at 2:50 P. M. I noticed a horse-drawn vehicle driven by Joe Farcas, 54 Louis street, owner of

the truck, with a load of sheet rock, some pieces about 8 foot long, and a lot of stone and lath, dumped into barge 95-H at the foot of East 11th street.

The other one related to the onions on 54th street. With respect to East 9th street, I have no record of materials deposited in the East 9th street dump. They didn't work there. They may have worked after we got through at four, but before that they didn't work there.

[1837] ROBERT LA SALLE. On *direct examination.* I live at 219 Hale avenue, Brooklyn. (Referring to a photograph.) I took that picture. As close as I can remember, it was taken about August 24, 1927. There is a notation on the back. When I was sent from the Department of Plant and Structures to take a picture of one of the steamers coming in from Paris, of Mr. Bocconoski, I think his name was, of the Chamber of Deputies of France—when I was taking the picture, one of the members of the Department of Street Cleaning happened to be on the boat as a representative of [1838] the Mayor's committee receiving distinguished guests coming from France, and he suggested to me to take a picture of the garbage coming out through one of the chutes of this boat of France.

I think the boat was Isle de France or Isle of France. It was the La France.

This object here on the left of the picture is the boat depositing water and garbage at the same time. This boat at the time I took that picture was at Quarantine. That is the lower bay. I was on the steamer Macom when the picture was taken. That is the official boat of the City of New York.

On *cross examination.* This boat [1839] was facing towards the harbor. In that picture we were looking toward the center of the boat. The boat was coming toward the harbor, toward the Statute of Liberty. The

camera was pointed toward the centre of the boat. I am not acquainted with bows or anything on boats. This would be the back of the boat (indicating). [1840] This is the back of the boat and this is the front of the boat (indicating).

The part of the boat exposed on the right-hand side of the picture is towards the back of the boat. I mean it is towards the rear of the boat. [1841] Where this garbage was coming out was directly in the center of the boat. It wasn't in the back nor it wasn't in the front. This is the hole here where it is coming out (indicating). That is the center of the boat. There was water coming out of the hole in the boat, but this particular place garbage was coming out at the same time. To tell you the truth, I don't know the stern or bow of a boat. This here is the rear-end of the boat (indicating). [1842] (Mr. Minard marked an X on the photograph to show the rear.)

And the bow was up this way? We will put a B up here opposite that for the bow. (Mr. Minard marked a B on the photograph to show the bow.)

This picture was taken between about 9 and 10 in the morning, around that time, maybe a little later. I saw the surface of the water before the boat came along. The La France was coming in at the same time we were coming there. We were coming alongside. [1843] We went out to meet the boat. We went to meet it out to Quarantine. We were a little early at the time, and we went out as far as the captain's license would allow them to go. I don't know how far that was. I was outside of Quarantine. I am not acquainted out there. I know it was past Quarantine, because I go out there quite often. When we sighted La France, we stopped there until La France came up to us, and we kept on close in with her. [1844] We sailed alongside of La France. We sailed—let's see now—on the left-hand side we sailed. Facing the harbor we sailed on the left-hand side. Let me get this right now. Coming in—no, to the right. It was

the right-hand side. We were on the right-hand side of La France, towards the New York side instead of the New Jersey side. When La France anchored we turned around on the right-hand side to come around where the propeller was. That is the rear of the boat as I call it. We come around then on the left-hand side and we [1845] anchored there for a while to let the mail boat take the mail off. As soon as the mail boat went out we come right in alongside.

When this picture was taken the boat was anchored and the gang plank was from the La France on to the Macom. We were anchored and tied up at the same time, tied alongside of the La France when that picture was taken. We had just come around from the rear of the boat; not the rear, the side of it, the right-hand side. Then we come around from the propeller and come to the left-hand side. At the time this picture was taken our boat had been in the position it was in, I should say, about half an hour before the distinguished guest was taken off the boat. [1846] The Macom had been in the position it was in at the time this picture was taken just long enough to let the distinguished guest off. I took the picture of the distinguished guest, and one of the representatives from the Street Cleaning Department happened to be on the boat, and he told me to take a picture of the garbage coming out, which I snapped two shots, and I should think that I took these pictures within 15 or 20 minutes after the boat come into the position. Both boats were standing still. The La France had been standing still at that time [1847] long enough to have the quarantine doctor come and O K it. That I don't know. I saw the boat stop. The La France had been standing still when this picture was taken about 15 or 20 minutes, at the most.

After I took the picture I sent it to one of the representatives of the Street Cleaning Department, who authorized me to take that picture. I believe his name is Mr. Connors. This notation on the back here is by the

photography department. I am only the assistant photographer. The signature on the back is a signature I don't know. That is Connor, but I don't know the signature [1848] I didn't make that notation on the back, I developed the picture myself, and sent it to him. (The photograph referred to was received in evidence and marked "Defendant's Exhibit 8.")

[1849] LEIGH E. WORTHING. On *direct examination:* I live at Saint George Hote, Brooklyn. [1850] I am a chemical engineer. I have been such for about 22 years. I was educated at the University of California. My professional work has dealt with the question of sewage systems and the effluents of sewer systems occasionally, in the course of various other duties I have.

At your direction I visited Asbury Park for the purpose of examining the maps of the sewer system in that city. It was, I believe, the 11th of March. I went down to the City Hall at Asbury Park and visited the Sewer Department and asked for the master of the Sewer Department, and someone whose name I did not obtain showed me the maps, and I asked them what sort of sewer system they had. I found out that they had an intercepting sewer and treatment tanks, and I tried to find out, or find [1851] the location of the treatment tanks on the maps, but it was not there located in the map shown me. However, it was pointed out to me on the map. The spot was pointed out as being about the location of the treatment tank. This spot was at 8th avenue, or between 8th avenue and Deal Lake on Ocean Drive. This map that was exhibited to me did not show the outlet of the sewer. It was pointed out to me—the outlet spot was indicated as being in the approximate neighborhood of the outlet. A spot was indicated as being in the neighborhood of the outlet, approximately. This empties off the shore into the Atlantic Ocean. On March 19th I went out on the tug to Asbury Park and rowed off in a small boat to the point

that had been indicated on the map as being the outlet of the sewer, and reached the spot that seemed to be the outlet, indicated by kind of an oil slick. When we arrived there it [1852] was quite easy to see that it was the outlet. There was a very strong upward current of water, and particles of fecal matter and decomposed fecal matter, pieces as long as two inches, some of them much smaller, but some as long as two inches, were visible. Likewise pieces of orange peel, celery, lettuce leaves and other objects were floating in the current of water. The water was very much discolored at this point and the consistency of thin soup, and the upward current at this point was very strong. Captain Bergstron and Mr. Crowe went with me from the tug in the boat inshore to the outlet. In addition to those materials that I have described there was great quantities of toilet paper coming up in the water, pieces of toilet paper three to four inches long, and even as much as six inches long, and perhaps two to four inches wide. There was a large quantity of toilet paper there.

The water was comparatively quiet at this point on account of the thin slick of oil that spread over the entire area. At the point where the sewer outlet emerged, it came up in a spot probably 15 feet in diameter. [1853] At this time there was a strong off-shore breeze and the oily slick extended out toward the ocean for 250 to 350 feet. Gulls, great quantities of gulls, of course, were feeding on the material coming out of the outlet of the sewer. At the time we were there I guess, estimating as well as one could, this was probably around a thousand feet, perhaps 1,200 feet—between 1,000 and 1,200 feet from the shore. There was a thin oil slick all over the water at this point, extending out to sea for quite a distance. The water emerging from the sewer came up with a strong upward current, very strong upward current, and [1854] material carried with that stream emerged very distinctly from the sewer outlet, this fecal matter, pieces of fecal matter, papers, celery and lettuce leaves, pieces of

orange and grapefruit peelings. The motion in the water at that point was distinctly upward, very strongly upward. The oil, greasy surface looked like these pictures of the comet. As a matter of fact, it was comparatively narrow at the head and broadening out fanwise as it went out toward the sea.

On *cross examination.* I don't know the name of the man who gave me the maps of the Asbury Park sewer system. It was an employee in the City Hall. He told me he was. [1855] He pointed out the sewer outlet on the map to me. I asked for the man who had charge of the Sewer Department. I did not see him. I understand that was a Mr. Bartley, and I didn't see him. I proceeded then to get the information without waiting to see Mr. Bartley.

JOHN BERGSTEN. [1856] On *direct examination.* I live at 7623 Sixth avenue, Brooklyn, New York. I am a master mariner. My first license as master mariner was issued to me in 1901. From that time on I have been master and chief officer on different occasions. I have followed the sea all my life. I have been in command as pilot or master of passenger and freight vessels in the coastal trade and trans-Atlantic trade. In the war I came east from the Pacific Coast and joined up the service, and I was assigned to assistant navigator of the America, which carried troops between Brest and New York. We made about a trip every month between New York and Brest, France. We carried about [1857] 6,500 troops each trip. I stayed with the service for the duration of the war. After I got released I have been connected with various steamship companies. One of them was Standard Steamship Company, export.

I have been pilot or master in command of vessels proceeding to points south of New York. With respect to the disposition of materials by these boats after leaving New York, and where that disposition usually takes place,

during her stay a vessel arriving in the port of New York, during her stay coming from Europe—I am alluding to my own experiences—my crew will generally get paid off inside of 24 hours. That means a general cleaning up of the whole vessel. The cargo will be discharged, holds will be cleaned, and a new crew will be employed. Boiler rooms will be cleaned out, brick work in boiler rooms—it will take about 10,000 bricks to a boiler—sometimes will be removed. All this material, including old bedding, old blankets, pillows, garbage and bricks from boilers, sweeping of the [1858] holds, which mostly consist of rotten fruit and grain, is all hoisted up or swept up from different departments and placed in some corner of the deck, generally, in my last vessel, the after deck, and allowed to remain there till we get our sailing orders to proceed to Philadelphia or Baltimore. After the orders have been received and you get outside, drop the pilot, which will be at Scotland Lightship or Ambrose, swing direct south—the course is south by west, quarter west—and head for Barnegat. All that mess that has been gathered up, which I have explained, consists of all this waste garbage and brick—orders will be immediately issued to clean decks, and the chief officer and all hands will start right in. If the vessel is bound for Philadelphia they have got very few hours to do it in. The ship must be cleaned on arriving in Delaware Breakwater, and most times I surmise— (Discussion of counsel.) [1859] That is the general proceeding of each and every vessel. [1860] I mean on my own vessel. The decks will be started to get cleaned off after we leave Scotland Lightship. Maybe half a mile, maybe a mile after we leave Scotland Lightship. Once we swing out on our course, which is south by west, quarter west, something like that, the work of cleaning the vessel is kept on till we arrive or till we have completed the cleaning, as it is only a few hours' run down to Delaware Breakwater, when we receive another pilot to go up the river, and no further

cleaning can be done. The accumulation while in New York must be disposed of before we can arrive in another port.

I have been in command of vessels containing cargoes of fruit or vegetables which have been condemned in the City of New York and which I was directed to dispose of on the high seas. [1861] On several occasions, I cannot in this instance recall dates, but as much as 2,000 cases of lemons and onions have been put on board my vessels, on several different occasions in the last five years. After they have been put on board I have received orders from our company to proceed to sea and dump this fruit at no less distance than 25 miles southeast or east-southeast of Ambrose Lightship. This can be verified by naval authorities. After I have completed my work to Philadelphia or Baltimore, whichever it may be at the time, the naval authorities on arrival back in New York have come on board and checked our position up where this fruit or onions was throwed overboard from my vessel. At no time was we permitted to throw this mentioned matter over the ship's rail in less than 25 miles distance from Ambrose.

With Captain Gainard and Captain Lawrence, on three occasions I observed the garbage material dumped at sea by the City of New York. [1862] On January 30th we left the Battery on the tug Thomas Moran. That is a sea-going tug. At 9:15 January 30th we arrived at 20 mile southeast by east of Scotland Light Vessel. At 6:55 A. M. scows started to dump this garbage. Some of the scows had—well, I would call them false bottoms—I don't know the real term; perhaps you have got another term for it, but they let go the bottom, and it falls out. Some scows have ports, sides to knock out. Either one is just as good as the other, in my opinion. This is how these scows discharge their material. [1863] On a certain signal from the towboat in charge of the scows, towing them out, the crew of the scows automatically release this

bottom, false bottom or side, and they fall out. It drops down out of the bottom dumper, and the scow behind it will automatically go over it, if it is a bottom dumper. If it is a side dumper, it will fly a certain distance off the scow, or the sinkable matter which is in the garbage will immediately sink by its own weight and disappear. I am describing what I saw. The rest of the garbage will spread itself out, and matters that are not floatable will sink. The rest will remain on top at the mercy of weather and wind and elements.

[1864] I observed the garbage after it was dumped on the occasion of the first trip, about 4 hours. We discontinued our observations and returned at 11:25. At the time we ceased watching it, there was no more than 10 per cent. of this flotsam left. The rest had been beaten down, as the weather had increased from moderate to a strong gale, the sea had increased from smooth to choppy to rough, which all had a tendency to tear up and break down any garbage or any other objects which may happen to be in the water, and by the time we ceased and the weather got so bad and the snow set in so thick that we couldn't see much further, there was very little of the garbage left. It was all tore up, shredded, except a few bottles, electric light bulbs, but they were scudding away before the wind the same as a boat. Sometimes peelings of [1865] lemons were bodily lifted out of the water by the force of the wind, and as the sea was breaking over them it was splitting them wide open. In other words, shredding them, tearing them up. The sea was very rough before the snow storm set in. The snow seems to tend to make it rougher. The garbage had drifted from its original dumping position about ten miles southwest. The occasion of the next visit was [1866] February 1st. The wind was blowing on the first trip, northeast. When we left it was blowing no less than 35 to 40 miles per hour. At the time the garbage materials were dumped at 6:55 A. M., the wind was moderate, increasing. From 6:55

For Defendant—John Bergsten, direct.

A. M. the velocity of the wind commenced to increase, so that at the time we discontinued observation it had increased, reached a maximum velocity of about 35 miles.

On the second trip, I left the Battery on the THOMAS MORAN for the 12-mile dump. On February 1st, 11:53 P. M., the signal was given by the towboat in charge of the garbage to commence dumping. The barges were hauled in a circular course until they were headed back for the harbor. At 12:18, February 2nd, A. M., the dumping was completed.

There was a fresh southwest wind with small sea, increasing to strong breeze, to rough and choppy sea. Tide at the [1867] time was ebb. During the night, with the aid of searchlights, we stayed with a big pile of garbage until daylight, when we got the bearings of Navesink Lighthouse and Ambrose Channel Light Vessel, and found that this garbage had drifted northeast 2½ miles in five hours, 5.9 hours. From daylight until 6:00 P. M. the garbage had spread in three long streaks covering about 7 miles in length, approximately 200 feet in width. This garbage consisted mostly of pineapples, grapefruit, orange peels, rags, bottles, books, dolls, pillows, mattresses; in fact, general city garbage. We stayed with the general mass, due to the fact that it submerged very rapidly. Our observations ended 6:35 P. M., February 2nd. The total period of time that I had observed this garbage from the time of the dumping to the time that I have just stated was between 17 and 18 hours. [1868] This garbage had drifted about southeast. In other words, to use a nautical term, they had drifted off-shore.

On March 1st we left the Battery on the ocean tug SUSAN MORAN and went out to the 8-mile dump. At 10:15 P. M. commenced to dump garbage. Signal was given from the towboat in charge of the lighters—of the garbage scows. At this time there were six scows loaded with garbage. Three of those were in charge of the SUSAN MORAN. The other three, I don't know who

was in charge of them. However, the six of them commenced dumping all at the same time, which was about 10:15 P. M. on March 1st. The tide was ebb, with a southeast moderate wind. I observed this garbage till 3:00 P. M. on March 2nd. This mass of garbage moved [1869] offshore about southeast, which means offshore. The prevailing wind off the Jersey coast for the whole year is westerly. There are times when the wind blows from the east, southeast or northeast, but the prevailing wind is from the southwest to north.

I was in charge of the boat that went ashore from the tug at sea on March 19th at Asbury Park, to inspect sewer outlets with Mr. Worthing. Mr. Crowe, Mr. Worthing, and myself comprised the party. I observed materials in the water after we had gone along the shore a distance on this date. [1870] I observed, even before we had left the boat, the tug, I observed a slick on the water abreast of that large hotel down there, whatever the name of it is, and a tremendous lot of sea birds was over this oil patch. After we got into this little lifeboat and got in where the birds were, we found there was a sewer outlet. We saw all kinds of vegetables, green stuff, green material, leaves, orange peel, a considerable amount of paper and a lot of foreign matter, human filth. I saw some safeties whatever it is, if it is permissible to mention it here. I mean condrums. [1871] The water appeared to me like it was forced from underneath up, as it continually boiled up. All this foreign matter was sent to the surface by some force from underneath, and the birds was feeding on it, and there was a distance of about three to four hundred feet, kind of an oily patch which come up from this place where all this element was pushed out. The water itself coming out of this sewer was like a thick soup.

[1872] On *cross examination.* By Mr. Minard. I have in my hand the Weather Bureau reports for the years 1906 to 1928, giving the wind directions off Asbury Park

for every month of each of the 28 years. I did not know that in January, for four years, from 1910 to 1914, the prevailing wind was northwest, but I feel inclined to agree with you, northwest.

Q. And that for the same four years the prevailing wind in February was northwest?

A. The next four years?

Q. The same four years for the next month of February?

A. It may be. (Discussion of counsel.)

[1873] Q. Let me see that paper that you are referring to there, Captain?

A. Yes, sir.

Q. Where is the original of this letter?

A. The original?

Q. Do you know where it is?

Mr. Crowe. I know where it is.

A. Here it is. I guess Mr. Crowe got it. We submitted the original copy, signed. (Handing a paper to Mr. Minard.)

I dictated some of it. We all dictated. We had our own notes.

Q. Show me what part you dictated here. (Indicating.)

A. Not that.

Q. Did you dictate any part of this?

A. All notes was taken. No dictation was taken by me. [1874] It was not dictated in my own presence. Captain Gainard dictated it. He had the notes and I wasn't there. After he brought this to me already written, I signed it, after I consulted my own notes.

We drifted for ten miles in four hours and a half the first time we were there. We drifted 5.9 miles during the 17 hours that we were out on the second trip. The reason why we drifted twice as far in four hours [1875] and a half as we did in 17 hours was the difference of weather. The first trip we had a gale of wind. It is a difference in the velocity of wind and sea and current.

For Defendant—John Bergsten, cross.

It don't alter the fact that we were in the same location, approximately, each time. We wasn't in the same place. The first and second time you were in different currents may be. [1876] We were in different currents. The difference was not so strong. It is pretty hard to determinate the real velocity or the true velocity of any current at any time except by bearing, continually bearing.

The difference in the velocity of the current on the first and the second occasions was that on January 30th when we went out, and February 1st when we went out, on January 30th they run twice as strong. [1877] You asked me the current; I am answering the question. I don't think the current run the same direction as the wind on both occasions. January 30th the current was not running with the wind on that day. (Discussion of counsel.) [1878] The direction of the wind on January 30th was northeast. It was from the northeast. The current on that day was just in the opposite direction. The current was going southeast, but I mean from northeast to the opposite quarter. I mean that the current was going in almost the opposite direction to the wind. On the 1st of February when I was there, the wind and current were not running in the same direction that day. The direction of the wind was southwest, coming from the southwest. The current was moving [1879] about northeast. It was going in the direction of the northeast. Objects that are above the surface of the water are affected more by the wind—anything that is above the water. Anything that is in the water, below the surface, is affected more by the current. In places where there are regular currents, the wind don't affect the current at all; very little. I am familiar with the current in the location of that 20 miles dumping ground. There is no current out there except by strong winds, and of course in the opposite direction. The wind in one direction produces [1880] a strong current in the other direction at times. I don't know whether that is explained by the fact that a certain proportion of

the surface of the water is carried in one direction by the wind and is replaced by the current in the opposite direction. I don't know if it is not the water coming back to take the place of this that the wind has moved on. On our trip of March the 1st, we drifted five miles in 17 hours. This was the third trip.

[1881] A. It is my own notes.

Q. Haven't you got any other notes than that?

A. No.

Q. You haven't got any other notes?

A. No, I turned them all in.

Q. When did you turn them in?

A. After each trip.

Q. To whom?

A. To Captain Gainard.

Q. Has he got them?

A. I don't know.

Q. He is supposed to have them, is he?

A. It was all made up, so far as I know.

Q. You haven't seen them since?

A. No.

Q. You haven't seen your notes of January 30th?

A. My notes I have seen.

Q. Where are they?

[1882] A. I destroyed them.

Q. When did you destroy them?

A. After each trip.

Q. You destroyed your notes of the trip of January 30th right after you got back?

A. Yes.

Q. The same day or the next day?

A. After the letter was computed.

Q. All right, let's see when the letter was computed. (After examining a paper.) That letter is dated February 4, 1930. Is that right?

Mr. Crowe. Yes, that is the date of the original and embraces the two trips.

For Defendant—John Bergsten, cross.

Q. It embraces the one of January 30th and February 1st? It that right?

A. Yes, sir.

I destroyed my notes of the January 30th trip after this letter was made up and checked, according to my notes. I destroyed my notes, as the record was here. I was not present at the time the letter of February 4th was dictated. [1883] I have not any of my notes for the second trip. They were destroyed at the same time. I have none of my notes for the third trip. They were destroyed about a couple of weeks ago, when the last letter was made up, about a week ago. I can remember in what direction the wind was blowing on the third trip. It was about southwest I think it started. (Examining a paper.) I remember without referring to Mr. Gainard's letter. The direction was southwest from the southwest. [1884] I didn't pay any attention to what direction the current was running at that time. I don't know whether there was any current or not.

I spoke about going down to Asbury Park and looking at this place where I saw what I thought was a sewer outlet. I said the water was coming up very [1885] strong from down below. The water was agitated in that place. I would call it a slight boil. So that anything that came in contact with that current would be agitated. There was no current. What I call a "boil" is not a current of water. It would be a disturbance caused by some element [1886] unknown to me from underneath. Anything that was in the water that came in contact with that disturbance would be churned up by it.

Q. No matter where it came from?

A. Oh, no, not the way it was acting.

Q. Suppose one of the gulls fell into it, would he be agitated by the water, too?

A. Yes, sir; he would be swung right around.

Q. And would you be if you had fallen into it?

For Defendant—John Bergsten, cross.

A. I don't know. I am a pretty good swimmer. I would hate like the dickens to fall into that water, though. I last sailed a ship out of New York for any southern point which took the course off the Jersey coast last March, 1929. I sailed the EXAMINER for [1887] Export Line. That is the name of the company. I sailed from New York to Philadelphia and Baltimore, back to New York. I was in that boat for six years. Prior to that, I had sailed out of New York Harbor every three months. Every three months I went down the coast. [1888] There was no possible means to dispose of our garbage before we left New York. There is a garbage disposal system in New York. They never take any garbage from our ships or from ordinary ships. We didn't throw it overboard in the New York Harbor because that would be violating the New York Harbor rules. We waited till we got outside of the harbor to dump it. Coming up, we disposed of it after we passed [1889] the breakwater of the Delaware, if we had any. Going down there is no time. From Cape May to Philadelphia is about a hundred miles—something like that. From New York to Cape May is about a hundred miles. It is not just as far from Cape May to Philadelphia as it is from here to Cape May. I misunderstood your question. I thought you meant from Delaware to New York, then from New York to Delaware the same thing. The river is 92 miles itself. We had 92 miles from Cape May to Philadelphia. It is about a hundred miles from New York to Cape May. We had to have all this done before we entered the Delaware Breakwater, because of the sanitation of Philadelphia, or any other city. The garbage dumped at the Delaware Breakwater [1890] does not get up to Philadelphia, but it would pollute the river. I never polluted no beach. When I dump, I dump on the high seas.

We would accumulate on the after deck that I talked about on garbage and dunnage and all this stuff I mentioned previous, from 40 to 50 tons. That is including

For Defendant—John Bergsten, cross.

broken dunnage. The space it would occupy on the after deck would be about 30 square feet, pretty near. It was about 10 feet high sometimes. [1891] I never measured the garbage lying on deck. You asked me how many feet. It was taller or higher than my head when I stood up, sometimes. The time it remained on our deck varied. Most of my stay going south would be five days in port. We accumulated it there on our deck for five days. The minute we got outside Scotland and dropped the pilot, we commenced operations. The longest period that I have ever left such an accumulation on my after deck was three weeks. That was in [1892] New York Harbor. At the end of the three weeks we had an awful pile piled up on our deck. It is hard to tell how much. It occupied just as much space on the forward deck as I have already mentioned on the after deck. That garbage went overboard. We let it go as soon as we dropped the pilot; as quick as I get on the high sea. About 30 or 35 per cent. of that accumulation, either on the after deck or the forward deck, is garbage. We had a crew of fifty. I think it is 49, to be correct.

[1893] I can't recall what date it was when I had an accumulation of 30 feet square and ten feet high on the after deck, and 30 feet square and 10 feet high on the forward deck. It was inside of the last six years. But it happened several times. It was both in the summertime and the wintertime. The best I could do was four trips a year. I had a regular schedule. The sailing was eight ships a month. Every time a ship comes home the schedule is changed. [1894] I sailed in all of the months, when I happened to be home. If I only came in once in three months, I didn't sail in all of them. The company has a regular schedule; not my ship. My ship had no regular schedule. Several times during the six years I had this much of an accumulation of garbage on the forward deck and after deck that I have told about. It was at least six times in six years. [1895] It couldn't be

more than once in one year if there was six times in six years. That would be once a year. All six of them couldn't hardly have been in one year. I wouldn't be home six times in a year. I can't recall whether that occurred more than once in a year on our ship.

I spoke about having a cargo of onions to carry out to sea. That was the same period as I stated before. As to the permit by which I dumped it at sea, I can tell you where you can find the permit. Go down to the Export Lines, Green Point. I don't recall the date. I don't recall the year. [1896] It was not two years ago. It was not five years ago. It was not ten years ago. I was only six years with the line. It was several times during the last six years. I believe I have already told you I cannot specify the date. I have told you where you can find the records. I will not go on record for the year. I will not go on record for the exact number of bags of onions or cases or articles there were. I have told you there were a couple of thousand. I said two thousand and over. I will add that to it. [1897] There has never been as many as 5,000. (Discussion of counsel.)

[1906] WITNESSES FOR COMPLAINANT. (Extended discussion with reference to certain exhibits preceded calling of first witness.)

CAPTAIN WALTER S. ANDERSON, U. S. Navy. On *direct examination.* This is a copy of the Act of Congress under which I exercise my jurisdiction in New York Harbor. [1907] The title of the Act is (reading): "An Act to Prevent Destructive and Injurious Deposits Within the Harbor and Adjacent Waters of New York City, and to Punish and Prevent Such Offenses," approved June 29, 1888. It is enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. [1908] Some testimony

was offered by the defense to indicate that steamships dumped quantities of garbage after they left Ambrose Channel. The territorial jurisdiction of the Supervisor of the Harbor is limited by the act to the "adjacent waters of the United Staes," and there is nothing here in the record to show that any dumping has occurred within the territorial waters over which any jurisdiction is exercised by the Supervisor of the Harbor of New York. [1909] The Act, as you see, gives the supervisor jurisdiction over the tidal waters of New York Harbor, its tributary and adjacent waters, and over those of Long Island Sound. As to what are "adjacent waters," we actually give permits to dump as far as 20 miles at sea. Also we require that decayed vegetables and fruits [1910] that are taken out by vessels from the harbor shall not be dumped within 25 miles from the shore, that is, under our regulations. That has been introduced in evidence.

My office maintains shore inspectors and patrol boats, which inspect for the purpose of seeing that the law and the regulations which my office has issued thereunder shall be carried out, and if not, to report, and if necessary apprehend the offenders.

In pursuance of that, the Supervisor's office has from time to time issued special notices to shipping companies, yacht clubs, and other concerns which have traffic by water, inviting their attention to the law, and to the fact that there are certain penalites, and that there should be no pollution of the harbor waters, or waters adjacent to them, defining a limit of 25 miles from the harbor entrance. [1911] That would cover all directions, but it really means 25 miles at sea. I have a copy of one of those notices with me. I have a copy of the first notice that was issued by the Supervisor's office, which was dated 1921. This (indicating) is the file copy that I hold in my hand, and I have a photostat of it which I deliver to you. The one that you hold in your hand is not an exact copy of the first notice that was issued, of

which I gave you a photostatic copy, but it is a reprint of July 2, 1929. We issued two notices, in the general sense of the one of which I furnished you a copy. [1912] (Discussion of counsel re notices of regulations.) [1914] (The paper referred to was received in evidence and marked "Complainant's Exhibit No. 342.") I think it is important, since this is a judicial hearing, that the Supervisor should make it a matter of record that he does not concur in the interpretation of the limitations of his authority. Since the issuance of the first notice, of which I have given you a copy, there have from time to time been issued circulars and special notices by the various Supervisors, including myself, addressed to the shipping companies, yacht clubs, and other concerns, that have a traffic by water. The subsequent notices have elaborated in some particulars, but the essence of them was contained in the first notice. [1915] These are the latest forms of the notice. One is a special notice, with a reprint date of July 2, 1929. (The paper referred to was received in evidence and marked "Complainant's Exhibit No. 343.")

Referring to Complainant's Exhibit No. 343, a certain part of the text is printed in red. Here is another special notice which has no red, but other parts are in heavy face black type. That is one of the notices. (The paper referred to was received in evidence and marked "Complainant's Exhibit No. 344.") [1917] (Discussion of counsel as to jurisdiction of supervisor.) To enforce these requirements to prevent dumping of garbage from vessels in New York Harbor and adjacent waters. [1918] The Supervisor's office periodically circularizes, by means of circulars and special notices, shipping companies, yacht clubs, and other concerns which have traffic by water, inviting their attention to the law and the penalties. The office maintains an inspection force, comprising shore inspectors and patrol boats, which have orders to report any infractions, and if the circumstances indicate the de-

sirability of actually apprehending as well as reporting offenders, they have legal authority to make arrests.

We have arrangements made for co-operation with other Governmental agencies. For example, the Health Department of the City of New York informs my office when quantities of vegetables and fruit have been condemned, and on what vessels they may be found, and the masters of such vessels are required to send a statement that they will not dump this decayed matter within 25 miles of the shore, and are instructed to log the location of the vessel at the time when they permit such dumping at sea. The patrol boats are maintained on duty, two of them, night and day, one in the general vicinity of Sea Narrows, and one in the general vicinity of Sandy Hook, and the dumping ground to the seaward of Sandy Hook.

I also have on a patrol boat which makes an inspection [1919] of the Harbor of New York itself, daily, excepting one or two days a week; the shore inspectors that I have spoken of inspect the water fronts.

We also have co-operation from the Custom Guards, and to some extent from the Prohibition Unit and the Coast Guards. Also, the statute provides that an informer may receive part of any fine assessed, and we receive reports from individuals which are followed up. We have reports of violations from time to time. In such cases, a letter is addressed to the offender, who is given an opportunity to make a statement, and reply, before further action is taken. They respond by letter, or in person, or by attorney, sometimes, in more than one way, and their statement is considered, and if it appears to be for the best interests of the Government, the case—[1920] (Interruption.) This is under my jurisdiction. If it appears to be to the best interests of the Government, the Supervisor, who, by the law, is specifically charged with the enforcement of the Act, sends a letter to the appropriate United States Attorney, giving a statement of the

circumstances and requesting that he proceed against the offender under the Federal statute.

[1921] I have information which would indicate that the steamship lines entering or leaving New York violate our regulations; from time to time reports are brought to my attention to the effect that illegal deposits have been made by vessels in the harbor, and I investigate, and if considered to the best interests of the Government, I request the United States Attorney to proceed against the offenders. [1922] The city barges have been offenders; on several occasions it has been reported to be, and on several occasions, while making my personal inspections of the harbor, I have noted that refuse material was getting into the waters of the harbor from the barges loaded with city refuse and garbage, and on these occasions I have communicated with the Commissioner of Street Cleaning or the Commissioner of Sanitation. It is proper to state that they have apparently, so far as they were concerned, endeavored to co-operate, but they have not always been successful in obtaining complete co-operation by their subordinates.

It was testified here to by a man named Gainard, who said that he was a pilot and had a pilot's license, and so on, that it was the ordinary practice in New York Harbor for vessels to accumulate garbage and rubbish, and other matter, to the extent of 50 tons, and shove it off at sea, or as soon as they leave the channel, and turn at Scotland Light. If that occurred as a general practice, or even occasionally, my inspection and supervision is of such a nature as to be likely to discover some instances of it, certainly [1923] I make personal supervision of the harbor, and of that work of enforcing the law in the harbor and in the adjacent waters. I go out once or twice a week myself. [1924] If conditions of that kind were prevalent, they would come to my personal notice. It has also been testified to here, by another witness for the defense, that they sometimes accumulate as much garbage and refuse

while in port as to occupy a space 30 feet square and 10 feet high on the after deck, and as much more on the fore deck; and that they push it off as soon as they leave the Ambrose Channel. [1925] If any such practice as that were general, it would come to my notice. I think an occasional violation might escape detection, but if such a thing as that occurred, piling refuse and garbage on deck, and throwing it overboard as soon as they leave Ambrose Channel, that would be a violation of our regulations, distinctly so.

[1926] I represent the War Department. The War Department is on record with respect to the practice of dumping New York City garbage at sea. The annual reports of the Supervisor to the Chief of Engineers, as passed on to the Secretary of War, and by him to Congress, which are already in evidence, express the attitude of the War Department on the question of dumping garbage at sea. In connection with that attitude, attempts have been made to secure the discontinuance of the prac- [1927] tice. The Secretary of War, on at least two occasions that I know of, has addressed a letter to the Mayor of New York, and requested that steps be taken to make it unnecessary to dump garbage at sea. I have an office copy of a letter of July 9, 1925, from J. L. Hines, Acting Secretary of War, to Mayor John F. Hylan of New York. That letter or a copy, was offered for identification, as Identification No. 336. I identify that as a copy of a letter which was furnished the Supervisor by the War Department. [1928] It is on the War Department letterhead and in the official course of business, furnished the Supervisor's office, for his files, and for his information and guidance. (The letter referred to was received in evidence and marked "Complainant's Exhibit No. 336.")

This is a letter from F. Trubee Davison, Acting Secretary of War, to Honorable J. J. Walker, Mayor of New York. That letter is dated, as appears on its face, July 18, 1927. It is a copy of a letter written by the War De-

partment to the Mayor of New York, which copy I hold in my hand, and is part of the files of my office, furnished to it by the War Department, for the information [1929] and guidance of the Supervisor. (The letter referred to by Mr. Minard was received in evidence and marked "Complainant's Exhibit No. 337.") This is a copy of a letter dated June 6, 1929, addressed to myself by A. A. Taylor, Commissioner of the Department of Street Cleaning of New York. I have the original of that letter here. This (indicating) is a true copy of the original, made under my supervision. (The letter referred to was received in evidence and marked "Complainant's Exhibit No. 338.")

[1930] When I reported for duty in New York, I wanted to acquaint myself with local conditions and get acquainted with local authorities with whom my office would have dealings. And I also particularly wanted to inform myself as to what the situation was with regard to dumping New York City garbage at sea and as to when there would be a probable ending of it. I therefore arranged to see Commissioner Taylor, and we discussed these matters, and at the end of my conversation I asked him if he would be good enough to give me a memorandum stating in substance what he had told me. He very kindly and promptly did so. [1931] This (indicating) is the letter which gives the explanation of my inquiry, or the answer. The report for 1929, although it bore the name of my predecessor, was his and my report. The statement in that report about the objectionable nature of dumping garbage at sea is my view.

I have had complaints about the dumping of garbage at sea. Whenever a complaint was made to me, I sent an inspector to follow it up, to look at local conditions which may have caused the complaint, and to talk to people in the locality, responsible people, and to endeavor to get any evidence possible as to the source of the material that had been complained of. [1932] I would not say the

complaints were frequent. We have had complaints direct from individuals, and from lawyers representing municipalities, and I have had some complaints that have reached me via the War Department. Coming to the best of my recollection from both Long Island and New Jersey, about equal in number. Such investigation as I made as to garbage reaching the shore was to study the records of my office. There were certain records in there of investigations that had been carried out by patrol boats, under the orders of my predecessor. [**1933**] I did not make any investigation other than my regular inspections, and I did not personally follow the garbage to the point where it was dumped.. My predecessor caused to be made an actual investigation of the floating of garbage and it is a matter of record. I think Captain Haas has the official reports here, one of my masters, and he is more competent to testify about that than I am, because he actually made the investigations.

On *cross examination.* The supervision of the waters outside the Harbor of New York is maintained by one patrol boat [**1934**] customarily, but there is a certain amount of co-operation— I have ordinarily one patrol boat outside at a time. That covers the territory which is covered by my dumping permits and the general vicinity of that—the dumping grounds, in other words, which go as far as 20 miles. My harbor patrol boat does not daily go out 20 miles to the dumping ground. I said it did not go out regularly. The masters of my patrol boats are experienced and are working in the enforcement of the law, [**1935**] which they well know, and that I leave them a considerable degree of initiative, and they may or may not go out to the 20-mile dump, but I will say that, more frequently, they do not go out to the 20-mile dump than they do. The harbor inspection is maintained by one patrol boat and by two inspectors—really, three inspectors and one harbor patrol boat. And then, of course, the

boats going in and out from the other stations take cognizance of anything they see. I think in my last report to the Secretary of War, I pointed out that this inspection force was lamentably inadequate, but steps had been taken to supplement it. [**1936**] I do not think a clear picture has been made of this. I have gotten in recent months a considerable degree of co-operation from other governmental agencies, that has increased my force. I refer to the Customs Agency; they have made reports. So that to say that the office has only two or three inspectors off shore does not give a true picture of apprehending offenders. I am dealing with facts, because I have had three during the time I have been there. As regards the size of the force. It could be increased, but it is a question of whether a large increase would increase the efficiency proportionate to the expense involved. [**1937**] I do not go out very often to a point south of Scotland Lightship—south by east, but I may say that I have been out there many times, because my profession is seagoing, and I have been in and out of this harbor many times. As supervisor of the harbor I have not been out there often.

On *re-direct examination.* I am a graduate of Annapolis. I have been in the Navy over 30 years, counting my course at the Naval Academy. I am familiar with the waters outside of the Harbor of New York. I am reasonably familiar with the winds and the effect of the winds on the surface of the sea. I have examined the reports that have been made from time to time, in checking the floating of the garbage on the ocean from these dumps. [**1938**] In the light of my experience as a sailor, and my familiarity with the wind and with the reports that have been made of these tests, I think that [**1939**] garbage from these dumps could reach the New Jersey shore.

On *re-cross examination.* I have been responsible for the navigation of vessels coming in and going out of New

York, and I always study the charts very carefully. My study of it has been very careful and in charge of a ship.

[1940] ED J. MURPHY. I live in Jersey City. I am a civil engineer. I am Chief of the Department of Harbors and Rivers of the Board of Commerce and Navigation in the State of New Jersey. A statement of frontage of lands under water on the Atlantic Ocean, for each municipality between Seabright and Cape May, showing lands conveyed to the municipalities, to private parties, and lands still owned by the State of New Jersey [1941] was an existing document in my office. The date of which this document speaks is something that was omitted inadvertently from this, but it was within the last two or three years. I would not say exactly, but it was somewhere around 1928. It was prepared for another purpose, when we were not so particular. The situation has not changed very much since then. They do not sell very much on the ocean.

The first column to the left shows State frontage, scaled from riparian ownership sheets of the New Jersey Geological Survey maps.

The name on the left is the municipality in- [1942] volved. That is the frontage of grants made to the municipality itself. This (indicating) Seabright is different from the others. It was not a grant of land; it was just an easement. The column of "Grants to Municipalities" consists of lands that the municipalities themselves own, that the State has transferred to them, granted particularly to them. There is a column, "Grants or Leases to Private Parties," and under that column are the private ownership leases, everyone except the municipality. The last column, "State Land," is land the ownership of which is retained by the State; that is all that is left of the original State possessions.

In the last column, under the caption "State Land," [1943] where there is no numeral, in those places, such

as Asbury Park, for instance, it has all been granted. Atlantic City has practically the same thing. That (indicating) is north of Beach Haven. (The paper referred to by Mr. Minard was received in evidence and marked "Complainant's Exhibit No. 345.")

[1944] JOHN G. HAAS. On *direct examination.* I live at 51 Ashford avenue, Stapleton, Staten Island. I am deputy inspector of barges, New York Harbor. I am connected with Captain Anderson's office. I made investigations of the floating of garbage dumped by New York scows at sea in February, March and April, 1929. I made six trips. We had orders to go out and follow a drift for a [1945] period of twenty-four hours, if possible. On each tour of duty; and the tow would come out and dump from eight to twelve miles, and we would place a buoy there, and we would take bearings, if possible, every two hours, and when the weather did not permit, we just don't throw the other buoys. We put one down at the time of the dumping, and then drift possibly two hours, and we would try to keep the buoy in sight, and place the buoy at the time of the dumping, and then drift approximately two hours, and place another buoy, and then go back and pick up the first one, and so on, until the weather would be better—for twenty-four hours, if possible. We were able to stay out for twenty-four hours, I think, probably two or three times.

After the garbage was dumped, it was probably stretched out, probably, a mile, or three-quarters of a mile, maybe 30 or 40 yards wide. How the formation changed as time went on would depend on the wind and the condition of the sea at times. We would generally pick out the biggest drift and stay with the biggest drift. [1946] Mostly, the winds influence the movement of garbage on the surface of the ocean. I have the dates of the trips. These (indicating) are the copies of the schedules of the drift of each period. Those are the official reports

that belong to our department. The dates were February 25, 1929; March 1, 1929; March 11, 1929; March 22, February 22, March 19. That is all.

Selecting one of the occasions when I was able to stay out for twenty-four hours, [1947] March 1, the Joseph H. Moran, with three garbage scows, dumped at 10:40 A. M., eight miles southeast of Scotland Light vessel; approximatedly drifted nine miles off Long Beach. That is, from the 8-mile limit. In 24 hours I came that distance on that particular day. I came within nine miles of Long Beach. The garbage mostly changed its course according to the direction of the wind, although the tide had some effect on that. I left that garbage at a point nine miles offshore. It was headed that time in a northerly direction toward the beach. It would work in gradually toward the beach. [1948] The 24-hour period was up at that time.

The next sheet I have in my hands is March 19. The tug M. Moran, with three garbage scows, eight miles southeast of Scotland Light vessel, 12:45 P. M. That point, eight miles southeast of Scotland Lightship, is from the New Jersey shore, approximately twelve miles. On this occasion, in twelve hours it drifted from the 8-mile dump into the whistle and bell buoy—the whistle buoy off Long Beach, Nos. 4 and 6. That is three miles from the shore. [1949] After the 12 hours was up, on this occasion, I have to leave it on account of the condition of the wind. There was a high wind of 25 miles an hour; a rough sea. That garbage made quite a big sweep; it worked in toward the Narrows and then worked on out to the east. Altogether it went fourteen or fifteen miles during the twelve hours. [1950] At the end of that 12 hours, I cannot tell how far the whole dump covered. It would be distributed further than I could see from my boat unless I kept close watch on it.

The next date that I went out was on February 25, 1929, the tug M. Moran with two garbage scows. It dumped eight miles southeast by east of Scotland Light

vessel, 5:50 P. M. We followed that until February 26, at 11 A. M. That is 18 hours, or thereabouts. [1951] They dumped there at the 8-mile dump. It worked northerly for four or five hours, and then worked back to the southward for a few hours, and then worked to the westward; that means toward the New Jersey shore. I had to leave it; it was 17 hours, this period—on account of the weather conditions. I mean on account of the velocity of the wind. At that time I left, the wind was east, approximately 35 miles an hour. I left that consignment of garbage approximately six miles from the New Jersey shore. At the time I left it, it was going in that direction. I had followed it 17 hours; it was drifting at the time I left it approximately a mile an hour. [1952] I left it within six miles of shore. This garbage at the time I left it was somewhere—down off Seabright.

The next date would be March 11, 1929, the tug Joseph H. Moran, with three garbage scows; dumped eight miles southeast by east of Scotland Light vessel, 10:15 P. M. Followed drift of garbage from 10:30 P. M., March 11, to 10:30 P. M., March 12, 24 hours. In this period, it drifted approximately easterly—mostly to seaward, we will say. The direction of the wind at that time was mostly southwest. The next date is February 22. In this report (indicating) there was another page, and I have not got that, and I do not know what boat it was. The Woodman dumped, 4:10 A. M. [1953] I have not got the number of scows. We drifted mostly easterly. I followed that for 24 hours. It drifted in the 24 hours approximately 18 miles. It does not show here the velocity of the wind. I have another page to go with this sheet (indicating). There was not much wind. The garbage had drifted approximately 18 miles when I left it. [1954] There was one on April 4. That shows the J. H. Moran with three garbage scows; dumped 12 miles, southeast by east, of Scotland Light vessel. We followed

that drift for 24 hours. It drifted 8 or 10 miles. The velocity of the wind that day was variable and I have not got that data here with me. There was not very much wind that day. It moved mostly northerly and then easterly. That is the extent of my reports. I made these inspections on the 8-mile or the 12-mile dump. [1955] (Discussion of counsel.) From what I saw of the movement of the garbage and the direction and velocity of the wind [1956] there is one particular case where I would say there is a possible chance of it going to the shore. That was going toward the New Jersey shore. That is the one I left six miles from the New Jersey shore with the wind blowing.

On *cross examination.* My opinion is that there is a bare possibility of it going to the shore, and on that one—the nearest that any of the garbage I followed for any period of time on the dates which I have specified drifted toward the Jersey shore, was six miles. [1957] In my observation I noticed that after the garbage had been in the water for a time, it gradually commenced to sink. After a period of 24 hours there is considerably less garbage floating than at the time of dumping. I could not say the process of sinking or submerging is continuous, but there is always a certain amount of it going down below the surface of the sea. The wind operates on and affects the surface of the sea. I testified to placing buoys. We used corks and old life belts that we made ourselves. We have a couple of them eight or ten feet above the surface of the water. [1958] These buoys were fastened to the location by a small anchor. The buoy extended eight feet above the water. The greatest height of any of the objects in the garbage above the water was probably half a foot, six or seven inches. The buoys would not drift somewhat under those circumstances; not in calm weather; but when you had the

35-mile they would probably break away and you would lose them and you could not handle them.

Referring to my report of February 25, 1929, I stated the velocity of the wind was approximately 35 miles an hour. [1959] That period was 17 hours. I testified that it drifted one mile per hour in 17 hours, just roughly speaking; more or less. It might have been less. In 17 hours, with a 35-mile an hour gale blowing, the garbage drifted at a rate of something like one mile an hour. The direction in which the wind was blowing that day was variable. The wind was blowing at the time of our observation southeast; a southeast wind blowing inshore. [1960] It blows inshore at the dumping grounds. It was the 8-mile dumping ground that I was working on at that time. The velocity of the wind at 5:50 P. M. was southeast, about 3 miles. I made all of these observations that are noted on my report as to the velocity of the wind. That is, just roughly; that is, not using any instruments. That is merely my judgment. I determined the drift by observations at particular times, when the weather permitted. Then the wind changed to east. That would be on the Jersey shore. [1961] Southeast from the 8-mile dump would be right by the Hook toward the ships, toward the mouth of the harbor. The 35-mile gale commenced to blow at 11 A. M. on the 26th. My deduction of 35 miles an hour was just a rough guess at it. None of this garbage went on inshore while I was observing it. I could not stay with it that long.

On *re-direct examination.* I could not say whether any other portion of the garbage than that particular section that I was watching went on shore. [1962] I was watching just a particular section to get the direction. I have been at sea, at work on the ocean for the past fifteen years. To determine roughly, within reasonable limits, the velocity of the wind, I use fairly good judgment on it. My experience has taught me that. During that drift

of 17 hours at 5:50 P. M. we had a southeast wind. The rate was three and eight miles. This continued from 5:50 P. M. to 11:50 P. M. The next period the wind was blowing east. [1963] At 11:50 P. M. it was 8 miles, at 5:50 A. M. 15 miles in the same direction. The next was at 9:50 30 miles and at 11 A. M. 35. The direction was east. In the course of that 17 hours the wind changed just once, from southeast to east. It proceeded at velocities varying from 3 miles to 35 miles an hour. A drifting of one mile an hour, I would not consider a fair average for the 35-mile an hour period of gale. It did not move just as fast under a 3-mile an hour wind. The velocity of the wind makes a difference in the speed of the movement. The buoy did not drift, as [1964] long as the anchor held. At the time I left there was still garbage on the surface of the water. As to the garbage that sinks beneath the surface of the water, I think there is a portion of the garbage that remains in a state of suspension below the surface of the water. [1965] If you will stay with that garbage, you see a certain amount that drifts away at a certain depth, and sometimes you see it float there indefinitely.

I am not in a position to state what would happen to the garbage below the surface of the water, if it gets into the undertow. I could not say anything with reference to the undertow. I was never working around the beach.

[1967] WILLIAM PARK. On *direct examination.* I live in Montclair, New Jersey. My business is at Pier 36, New York. I am general superintendent of the Clyde and Mallory Lines. I have been in the steamship business about 30 or 35 years. I have been before the mast, and on up to captain. [1968] I was captain of a ship about five years. I was in the various positions of mate, and so on. I entered the steamship service as second officer. I discontinued the handling of a ship in 1917. Since then

For Plaintiff—William Park, direct.

I have continuously been superintendent of the line. I have charge of all repairs and the manning of the ships. I have charge of their physical operation. We run 21 ships out of New York. [1969] We have eleven sailings a week, eleven in and eleven out.

I know the steamship lines out of New York for coastwise vessels. All those steamship lines leaving New York go out of Ambrose Channel. The trans-Atlantic vessels go east; out to Ambrose Light vessel, and then they go east. They do not go any nearer to the New Jersey shore than the mouth of the Ambrose Channel. There are coastwise lines in and out of New York. The ships that go right down the American coast generally go down to Scotland Lightship, and from there on to Barnegat. At Scotland Lightship, it would be about 3 to 6 miles from shore, and after that it would be farther out. [1970] The angle is away from shore. The lane for vessels that go to the southern ports in the United States is right from Scotland Lightship to Barnegat, I suppose. I would not know how many vessels there are that pass on that lane a day or a week. I do not know how many vessels there are sailing in the coastal service for all lines. [1971] I can name most of the lines—the Southern Pacific, the Old Dominion, the Clyde and Mallory Lines, the Savannah Line. That is about all, out of New York. And a lot of freight ships. We have more sailings than the others. We have probably three times as many as any other one line. Our line has the most numerous sailings of any line in service. In our ships we do not feed the crew in port. As soon as the ship arrives we stop feeding the crew on the ship. I do not know whether any of the other lines adopt that method or not. I have never sailed on any ships that did not do that.

[1972] We have no garbage accumulations on our vessels except what accumulates for half a day. That would be about one of those regular ashcans full—about eighteen inches in diameter and four feet high. We dump that

overboard when we get to sea. I know it is dumpel in the sea well after we get to the lightship. It would probably be about two bushels. The sweepings of the holds and the dunnage is carried onto the piers and carted off by the garbage company. That is not maintained on the deck and dumped at sea at all. I do not know whether that is a general practice. [1973] In our regular line, we get in one day and sail the next; we get in today and sail tomorrow at noon. As to vessels accumulating as much as 50 tons of garbage and refuse which they pile up on the deck, well, we could not adopt that method on our boats. We would not have room enough to put it. The space on a boat is worth something. I do not know of any lines of coastwise vessels where the boats lie around in the dock for ten days in New York. They make a pretty quick turn-around in a coastwise ship. They would not make much money if they stayed in [1974] port ten days.

On *cross examination.* Our ships leave New York at twelve o'clock noon. They serve luncheon for 150 passengers. By the time they get through lunch, there would probably be, maybe, three or four bushels of garbage. I have been on board when they dumped the garbage. It is dumped little by little. It is not dumped all at one time. That garbage consists of household garbage, such as fruit rinds and grapefruit. That is for 150 passengers. They have a slop hole, and that is dumped out of the galley. That is, as I have testified, from 3 to 6 [1975] miles off the east of the Jersey coast. I do not know what other vessels do as to dumping their garbage. I have been only on our vessels, for 30 years. When I have been at sea I have never seen other vessels dumping. I have seen the seagulls following them; so that I know that they had just been dumping. I allow dumping at sea. There is nothing on deck when they leave the dock. That is, with reference to the passenger vessels. We have some freighters. [1976] The stevedores clean

the holds in port, and it is taken outside and cleared away. That is the practice with our line. I do not know whether that is the practice of other lines. I cannot tell you anything about what other vessels do. Our vessels dump garbage. They dump garbage in the waters off the Jersey coast.

On *re-direct examination.* When they get started in the galley—there is a big slop chute in there. [1977] There is a big hopper that throws it overboard. As we throw it in there, it goes out. As the cook gets through, he throws it overboard. Each piece goes out as it is thrown away. In places along the route, there is no great quantity of garbage. From my experience after the garbage gets in the sea some of it the fish eat; some the sea gulls eat; some floats and drifts everywhere that the wind takes it. Why, anything like bread or meat, anything that is edible is disposed of by sea gulls. [1978] They eat anything that is edible. Of course, they do not eat the bottles or tin cans or things like that. I have observed the sea gulls when anything is dropped into the sea. They follow the ship to get the things dropped into the sea. I have seen them follow the ship and pounce down upon it and dispose of the whole lot of material that floats. That is what happened to a large part of the garbage of the ship as it is dumped at sea. I never saw any quantity of garbage dumped at sea. I could not say what is the largest quantity I have ever seen dumped at any time. [1979] It depends upon where at sea. I have not been on freighters very much; but on the passenger ships, just as I say, we do not carry any more than one of those cans would hold—about a bushel.

I heard Captain Anderson testify this morning. I am familiar with the regulations of the Supervisor with regard to dumping materials in the sea. Our line tries to observe those regulations. I undertake to say that

they are observed. That is the general practice of the steamships. Our freighters accumulate garbage on the decks to carry out to sea. We only have a crew of thirty men on those ships, and they are in port two days. There are probably four or five cans full. That is disposed of after they go out. [1980] They do not accumulate anything like 50 tons of garbage, or an area 30 feet square and 10 feet high. It does not sound reasonable to me. With regard to rubbish as a whole, it is practicable on any vessel to have that rubbish carried out to sea and dump it. The quantity depends on the kind of cargo you have in, of course. Our lines do not do it because we have ships that run in and out so regularly, [1981] and we put the hatches in, and we do not get time to do it. When we put the hatches on we cannot take that on and off. There are practical and economic considerations which govern the disposal of that matter. Those principles of economy would apply to any ship.

On *re-cross examination.* I have never been on any foreign-bound vessel going out of New York. I do not know about the conditions on those foreign-bound vessels. I do not know anything about the quantity of garbage they have. I am only speaking of our particular line, engaged in the coastwise trade. [1982] They dump garbage at sea. I do not know of any foreign vessels that make an American port after leaving New York. They are allowed to touch at a United States port, but they do not touch at a United States port after leaving New York. A vessel going out of New York would be allowed to touch before going to Europe.

HARRY P. SNOW. [1983] On *direct examination.* I live in Brooklyn. I am chief officer of the steamship George Washington. I have been in the steamship business about 30 years altogether. My service for that time has been anything from mess boy to captain. I have

sailed as captain only relieving, for a matter of three months, or something like that, at various times. I sail for the Eastern Steamship Company. They operate lines all the way from Norfolk, Virginia, east to Nova Scotia. I have worked on the Southern Division. I mean going to Norfolk. That is the Old Dominion Line. In and out of New [1984] York running south, my company operates nine sailings a week. I have been traveling in the New York-southern route since 1925. I was not sailing for six years previous to that. Previous to that I was for the same company. I have been sailing down to that port, Old Point Comfort, Virginia, all the time I have been going to sea.

The accumulations of the garbage while we were in the ports were kept in cans and dumped overboard when we went to sea. My boat was in the port about 22 hours. We have two ships that lay over 48 hours week-ends. The crew on these vessels is anywhere from 30 to 90. [1985] We serve meals to the crew while in port. We do not serve meals to the passengers while in port. Part of our boats are freight and part passenger boats; three of each. How much garbage the boats would accumulate while they are in port would depend on the number of the crew. The ships that I am on would be practically two ten-gallon cans full; two or three. We carry around 90 in the crew. It is dumped at sea. We have a slop hopper. [1986] That is the way we dispose of it. They might dump at one time, but it is seldom all at once. We take that stuff usually below Shrewsbury Buoy. That is about three miles, I judge, from shore. I have never noticed what happened to that garbage when it drops into the sea. I know a part of it will float, some will sink, and some is eaten up. I have seen the sea gulls eat it. They follow all ships to get the garbage and eat it. I have never observed, when a quantity of garbage is dropped at sea, how much is disposed of. I know that sometimes you see a great many sea gulls;

For Plaintiff—Harry P. Snow, cross.

I do not know how much that disposes of. Anything that is edible is disposed of in that way. [1987] Our freight boats have the same thing; only there it would not be nearly as much. I am speaking now of the vessel which has the largest crew of any on our line. 90 is the most they have carried in any season. I do not know how much garbage these smaller vessels accumulate.

I have sailed through the dumping grounds out at sea, where the city dumps its garbage; years ago, however, that is. I have sailed through the sea lately when there were quantities of garbage in the water. I could not give you the date; at various times. I have seen various areas covered with it. [1988] To give an idea of some of the areas is pretty hard to do anywhere near accurately; sometimes there may be spots of a couple of hundred feet of area; sometimes larger; sometimes less.

The quantities that I have seen in these spots could come from a vessel but I do not think they would, because it is all fruit skins, and you would not get that much from a ship. The large quantities of fruit skins do not come from the ships in my opinion. Our line, together with the lines represented by Captain Park represent, I should say, over half of the actual coastal vessels.

[1989] On *cross examination.* The 20-mile dump of the City of New York for the disposition of garbage—is nowhere near the coastal lane. When I have observed it, I have observed it in the lane traversed by the coastal lines. I have not testified as to the others. While passing ships of foreign lines going in and out of the channel, I have noticed piles of refuse material on the decks of those vessels. Those refuse materials would be disposed of at sea. Fruit skins and fruit rinds do not form a part of that; that is not what they would have. [1990] Captain Park has testified that the garbage of his vessels consisted of grapefruit, fruit rinds and the like. The garbage of our lines does not differ to a great extent;

part of it would be liquid. There would be fruit rinds, coffee grounds, bones and pieces of meat. There would be milk cans and tin cans, sardine cans, ketchup bottles and mayonnaise dressing bottles. The Shrewsbury Light is about three miles offshore. I cannot say exactly. The garbage would not be dumped before that, coming out of and into New York. We have a rule in our own company as to that. We try to keep somewheres about it. [1991] That applies only to the regulations of our own company.

On *re-direct examination.* It has been testified to here by witnesses for the defense that vessels, while tied up in New York, accumulate garbage and rubbish to the extent of 50 tons on the decks, and another witness said to the extent of covering areas 30 feet square and 10 feet high on the after deck, and the same amount on the forward deck, at times. [1992] I have never particularly observed such a condition in any vessel. It looks to me to be right much in the light of my experience. I was asked if I throw ketchup bottles, and all these little objects, overboard. As I said before, all would not be more than three of those cans, at the outside. That would be for everything for the entire period of lying in the port. [1993] After that it is thrown overboard as it is made, in small quantities. I said I had seen piles of materials on vessels. I have only seen it in passing. It would be dunnage and sweepings from the holds. By "dunnage" I mean pieces of wood used in storing freight. Sweepings from the hold would be the general accumulation of dirt in the hold. There is absolutely no garbage in that. I should say there was not anything unsanitary about that stuff. There is not any accumulation on our vessels coming in. There is not any reason for any on ours. Generally speaking, there is not any reason to accumulate garbage until we get off the shore of New Jersey, and then dump it in the ocean. [1994] I am familiar with

the regulations that Captain Anderson testified to, and have them posted on the ship. Generally speaking, those regulations are observed to the best of our ability.

On *re-cross examination.* I cannot say I have seen fruiters with a pile of dunnage and material on their decks. I have not particularly noticed. It would not naturally have garbage, what I term "garbage." I term garbage what comes from the kitchen. What I call garbage probably would be mixed in with the sweepings from the hold, some of the fruit skins, and so on, if they took it out on the deck. **[1995]** I do not see any reason why they would mix it. Garbage is so wet, and it would mess your deck up if you did put it in there. We clean decks after we get out. Whether that is the general practice, of cleaning decks after they get out to sea, of all lines and all vessels, I can only say as to those that I have been on, but I suppose it would be on any line. I do not know that. All of my testimony given here has been confined to those conditions on our own line with the exception that I have seen dunnage on freight ships going to sea. I did not say that dunnage includes refuse of all kinds. I have not said it consisted of garbage, or anything about garbage. With regard to the fruiters, I cannot swear there were no decomposed fruits. **[1996]** I can only say as to the one I am on. I could not say anything about the fruiters.

On *re-direct examination.* In the light of my practice on the sea, I have testified I would not cover my deck up with slippery, slimy garbage. No good sailor would do that.

On *re-cross examination.* We have canvas and wood decks on our vessel. There is necessarily a different practice where you have canvas decks and wood decks. We have canvas decks on some freight ships, including the steel modern ship. **[1997]** I would not do that any

more with canvas decks than I would with wood decks. I cannot tell about others. In some of the ships the main deck is the passenger deck, too. There is a distinction between the main deck and the passenger deck. I am referring to any deck. I would not put it on any deck.

ROBERT BARTLEY. [1998] On *direct examination.* I live in Asbury Park. I am Superintendent of Water & Sewers of the City of Asbury Park. I have been there in that position since 1914. I have been in the town since 1904. I am entirely familiar with the sewer system of the City of Asbury Park. The sewage is collected from a regular intercepting system. It comes down from the intercepting [1999] mains, and is discharged into a suction header in the pump house of our disposal plant at Eighth avenue and Ocean avenue. From the suction headers it is pumped up into the sludge tank, across a weir, to precipitate sand in a sand trap. Then it travels in a tank over to the west side of Ocean avenue, where any floating matter is held or detained by what we call scum boards. Then the clear liquid, or partially clear liquid, flows out into an effluent trough, and from that point it is discharged by a line into the various outflows, and it flows to sea by gravity from the station where the trough is. It is all gravity. The outlets are approximately 1,000 feet from the shore. The nature and condition of the effluent that goes into the sea is fairly good. The State Department went down and conducted some tests about the effluent. I have not any copy of those tests at hand, and neither have I any of the data pertaining to the tests, but the liquid—it shows like soap, you know, would impart to the sewage. But there is no fecal matter that goes out. There is no solid substance. [2000] That is and is not one of the accepted methods of treating and disposing of sewage. This tank was installed in 1909, or thereabouts, and the city is contemplating improving the method of disposal down there. I should

say the effluent is not of a character or condition to affect a pollution of the water on the beaches. I should think that that effluent, by the time it reaches the shore, would be so finely divided that there would be no danger whatsoever.

On the 19th of March, 1930, Mr. Crowe and a few other gentlemen went on a voyage of discovery, and went out to our sewer outlets, or one of them, one or two who were members of the party, and came here and testified as to all kinds of matter coming out of that sewer. That may have been the case. As to personal observation, I could not say what came out of there. But in the winter of every year we open a blow-off gate, to relieve the sludge tank of its load, and after the tank is properly cleaned and washed down, we close that valve again, and we do not open it until such time as we find it necessary in the [2001] succeeding winter. There is a period every winter when we open it to clean out our system, and by-pass the sewage. That is a regular occurrence during a certain period in the wintertime in the operation of our system. That was a situation which happened to exist on the 19th of March, 1930.

On *cross examination.* As to the cubical contents of the largest sedimentation plant, I wish I had a slide rule and I could tell you. Why, the tank has a mean length of about 109 feet; it is about 79 feet wide, if I am not mistaken, and the height to the spillway is 8 feet. I think, at a 6,000,000 gallon rate—I figured it once before, but I have not the figures at hand. It is a 6,000,000 gallon rate, which is very high. Our maximum is somewhere around four, and I think it allows two hours and [2002] a half for changing. The period of detention is at a 6,000,000 gallon rate. (Discussion of counsel.) The State Board of Health has various requirements. [2003] They require eight hours detention for tanks of a certain length, and four hours of detention for others. It is a question

that we have at issue with the State Board of Health at this time. The State Board of Health says we ought to have eight hours detention. But we contest it. I do not know that the Board of Health has filed a complaint in that respect against our city. I have never heard of any complaint being filed. I have not been directed by the State Board of Health, or any representative of the State Board of Health, to change. There has been some correspondence about it, but as to what it was, I do not know. I do not know that the State maintains that our period of detention is too short by at least some five hours and a half. They have not [2004] stated that directly to me. But they maintain that our requirements have outgrown the original tank, based on that period of detention. I do not recall how many cubic feet of sedimentation tank is required per unit of population for one day and I have not the data with me. I believe our requirements are something in the neighborhood of two cubic feet. I may be wrong. It may be half a foot. But it is either one or two feet, or one-half a foot.

The outlet from that sewer is 1,000 feet from our beach, approximately within 50 feet of it, I should say; more or less that. There are no times during the year when the condition which existed on March 19th would be likely to exist, except when we are cleaning the tank, which is always in the winter. You can readily imagine that we could not have a condition like that obtain in the summer. It would [2005] be entirely out of order. In the wintertime when we are cleaning the tank the bypass makes possible the presence of solids in the effluent; bypass—to use an engineering expression—the tank, you know, and just pump direct to sea. That by-passing could all be done during the summertime. You could do anything of that nature at any time, but I would not want to do it. I cannot conceive of any necessity for by-passing in the summertime. I cannot conceive of any such necessity, because the tank is a concrete tank, very

substantially constructed, and there would never be any reason, outside of a catastrophe. There are no screens on the outlet of our sewer. At the outlet from the sedimentation tank, there are not any screens. [2006] There is neither a screen at the beginning of the outlet from the sedimentation tank, nor at the end of the outlet in the ocean.

On *re-direct examination.* We have no screens. There are none at the inlet of our tank. It was testified that out of this sewer pipe came orange peels and various other articles of that sort. Under the conditions it may be possible; it may be under the conditions that functioned at that time. You could peel an orange, and if you were careless, you know over on the west side, where we have the poorer [2007] element, they are liable to throw an orange peel in there. That is a possibility. An unbroken orange could not get through our sewerage system.

[2008] SAMUEL A. GREELEY. On *direct examination.* I live in Morton Grove, Illinois. I am an hydraulic and sanitary engineer. My firm is Pearse, Greeley & Hanson. The members of that firm are Langdon Pearse, myself, and Paul Hanson. I am engaged in the practice of hydraulic and sanitary engineering. I entered Harvard College, and graduated with the class of 1903, and after that went to the Massachusetts Institute of Technology and graduated there, with a degree of Civil Engineer in Sanitary Engineering, in 1906. I studied for a short while at Columbia in the [2009] evenings, but it did not amount to very much. I started out in the actual practice of this work in the summer of 1904, and I have continued at it regularly since that time. With special reference to the collection and disposal of garbage and municipal refuse, my experience has been, briefly, as follows:

For Plaintiff—Samuel A. Greeley, direct.

I started out as an assistant in the office of Rudolph Herring about the year 1906, and during that time I made some measurements and analyses of cartloads of refuse collected in New York City, and also worked on one or two other projects that were in the office, chiefly one from New York, and El Paso, Texas.

And in 1908 I spent two or three months in Europe in studying municipal works of various kinds, including garbage and refuse disposal work, and returning from there I went to Milwaukee as an engineer in charge of a refuse disposal plant for the disposal of 300 tons of refuse a day. That was in 1908, and chiefly in 1909 and 1910. When the plant was completed, I was appointed superintendent in charge of the plant, and had charge of its operation for about fifteen months. [2010] I was the active superintendent of the plant on the job every day, superintending the disposal of the garbage and other refuse, and maintenance of the fires and upkeep and handling of the plant. During that time, for a few months, I again visited Europe, studying the various matters with reference to the collection and disposal of refuse, and other sanitary and engineering matters. And I also had a part in the final test of a new incinerator that had recently been completed at Atlanta, Georgia.

After that I had a part in the investigation of the collection and disposal of refuse for the City of Chicago, conducted by Messrs. Osborne & Featherstone, and I had charge of a very substantial part of that work that was done in connection with that investigation.

From that time on, various private engagements, in small towns around Chicago, that wanted some direction in this work—Detroit, Michigan; Danville and Rockwell, Illinois, and Louisville, Kentucky. I made quite an investigation at Louisville, Kentucky, in connection with the disposal of various kinds of refuse, with recommendations as to what they might do. Refuse, if limited to house refuse, means ashes, [2011] garbage, and rubbish.

For Plaintiff—Samuel A. Greeley, direct.

Then, during the war, I was for a while at Camp Custer, as supervising engineer, and later on the sanitation of towns where ships were being built for the United States Shipping Board, and in that connection I went to shipyard units on the New England coast, the Pacific Coast, and the Great Lakes, to examine the situation with regard to the sanitation and health, due to the influx of workers, and in all cases I had charge of the garbage disposal station.

After the war, in 1919, I had quite a project, which I had started in 1915, and I have had engagements with relation to the collection and disposal of garbage and other refuse in the following cities, among others:

Worcester, Massachusetts; Toledo, Ohio; Montclair, New Jersey; Utica, New York; Akron, Ohio; Philadelphia, Pennsylvania; New Bedford, Massachusetts; Baltimore, Maryland; Birmingham, Alabama; Kansas City, Missouri; Pontiac, Michigan; Minneapolis, Minnesota.

And at the present time I am working at a problem of that sort at Schenectady, New York.

Those engagements were of different sorts. Some of them was brief, and some of them were more extended.

That is an account of the work I have had. I was the co-author, with Rudolph Herring, of a book entitled "Collection and Disposal [2012] of Municipal Refuse," published by the McGraw-Hill Company, in 1921. That is my book. That is a standard text book in the United States.

I have a degree of familiarity with the methods used in New York City for the collecting and disposing of garbage. That relates off and on, ever since I first became familiar with it, in connection with the work that I did for Mr. Herring in 1906. Mr. Herring was a member of a municipal committee to investigate the garbage situation in 1905, 1906 and 1907. [2013] He made a report. The other members of the committee were Mr. Parsons and Mr. Whinnery. I think it was Herbert B. Par-

sons. The other member was Samuel Whinnery. I was down on some of the water front dumps, weighing, measuring, and analyzing cart loads of the material. I actually participated in the investigation which resulted in that report. The method of dumping garbage at sea in my opinion is a temporary means of disposal, suitable for emergency use. [2015] (Discussion of counsel.) There are two objections to it, as I see it. One of them is the danger of pollution of adjacent shore lines, and the other is the danger of interruption, due to stormy, rough weather, which, I feel, is a reaction against the system itself. [2016] That, however, would tend to increase the quantity dumped at one time after the interruption ended. I base my opinion as to the objectionable feature, of course, on my own general opinion that the pollution of the adjacent shore lines with stranded and floating garbage and other refuse is objectionable. It is not a satisfactory method of garbage disposal. In forming that opinion, I have to an extent relied upon official reports concerning the question of dumping [2017] New York City's garbage at sea.

I have referred to several reports. The first one is the report of Messrs. Parsons, Herring and Whinnery, which was presented to Mayor George B. McClellan, December 31, 1907. I find on page 100 of that report, this language, with reference to dumping at sea:

"All the refuse collections could be dumped into the Atlantic Ocean, but, unfortunately, the least harmful material sinks, and the foulest floats; so that much of the floating mass will be scattered along the beaches through the action of the current and wind. This fouling of the beaches creates a nuisance which the public should not be asked to tolerate. The cost of sending the scows so far to sea that there would be no danger of fouling the beaches, and the interruptions caused by storms and ice, forbid the use of this plan. The dumping of refuse at sea should not

be resorted to, except in cases of emergency, and the period of such dumping should be of short duration."

That is one of the reports. [2018] That report, I think relates to a possible method of disposition of it in that way. [2019] The next one is the "Report on the Collection and Disposal of Solid Wastes in the City of New York, 1921," made to the Honorable John F. Hylan, Mayor of New York, and signed by a group of some ten. Their names are John Kenlon, Edward A. Byrne, Royal S. Copeland, Philip P. Farley, Louis F. Haffen, Murray Hulbert, John P. Leo, Merritt H. Smith, Amos Schaeffer and Arthur S. Tuttle.

With reference to the disposal of garbage, it states as follows:

> "The greatest objection to the present system of disposition of waste material is in connection with the method now being used for getting rid of garbage, which is both unsanitary and uneconomical. For some years the disposal of garbage, not only did not cost the city anything, but, as a matter of fact, returned a small yearly profit. At the present high prices of labor and the low price of grease and tankage, few, if any, of the reduction plants in large cities throughout the country can show a profit; but taken over a series of years, many of these plants have returned a revenue over and above the cost of operation.
>
> "Aside, however, from the question of cost, it seems undesirable to dump garbage at sea, as it is being done at present. It is known that the Federal authorities quietly resent, [2020] if they do not openly object, to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. When these objections become sufficiently strong, it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal."

This (indicating) is a paper by Mr. Kenneth Allen, published in the "Proceedings of the American Institute

of Civil Engineers," November, 1926. It describes the method of dumping. Kenneth Allen is a sanitary engineer in the office of the chief engineer of the Board of Estimate and Apportionment in New York City. It describes the method of dumping garbage at sea in New York City and then says:

> "A considerable part of the material sinks, and is no doubt rapidly disposed of by fish and other marine life; but the floating refuse is unsightly, and with winds in the quarter of the southeast, there is always the probability of its reaching the shore and fouling the beaches."

And the last one that I have looked at is also by Mr. Kenneth Allen, and appears as an article in "Municipal Sanitation" for January, 1903. The article is entitled "How New York Handles Her Garbage and Rubbish Problem": [2021] On page 17 it says:

> "Many complaints have been received from owners and lessees of Long Island and New Jersey bathing beaches, of rubbish and garbage which drifts at times to the shore and strand there."

I have considered these various reports. The conclusions reached in them are in harmony with my own opinion and views on the subject as a sanitary expert.

By Mr. Minard. I took the objections of the representatives of the city into account in forming my opinion. I have no different opinion of my own. [2022] That is my own view.

On *cross examination.* Referring to the report of 1921, [2023] I think that committee made recommendation with reference to the final disposition of garbage. As to the language at the top of page 13, "As heretofore stated, the committee does not believe it advisable at this time to make any final recommendation as to the disposition of garbage." As I understand it, the committee made no final recommendation with regard to the method of

disposal of garbage; but it did make some recommendation as to the disposal of garbage. It did not make any final recommendation as to the city policy. That report was made in the year 1921. It is my understanding that that was a committee of men of standing, and that was made after investigation and consideration for some time. [2025] (Discussion of counsel.) I have not studied or investigated the conditions which confronted the City of New York in October, 1918, when the contractor that had the contract for disposition of the garbage abandoned its contract, in detail, or with any degree of responsibility. I mean that I was more or less familiar with what was going on, but I was not engaged in any particular study of it at that time or since. I think the question requires an answer of that sort.

On *re-direct examination.* In that report of 1921 there is a general recommendation. [2026] They are:

> "As a result of the committee's investigation, and in order to put in practical form the ideas to which attention has been called in the foregoing discussion, it is recommended that the following program be [2027] adopted for the disposal of all solid wastes:
>
> "(1) That the city ordinances and the rules and regulations of the Street Cleaning and Health Departments requiring separation of all wastes by the householder be rigidly enforced.
>
> "(2) That the collection of ashes, rubbish, garbage and street sweepings, be made separately.
>
> "(3) That as soon as practicable, the collection and final disposition of all waste be made directly by the city, without the intervention of contractors.
>
> "(4) That the ashes, entirely free from rubbish, from street sweepings, and from garbage, be used for filling low lands, and that wherever possible city-owned lands be used for this purpose, and that the necessary legislation to permit of this be obtained.
>
> "(5) That reclamation stations be established at suitable locations, where the more available materials

may be picked out of the rubbish, and the residue burned in furnaces operated at a sufficiently high temperature to prevent possible nuisance.

"(6) That all street sweepings be burned at the reclamation stations.

"(7) That garbage be taken to sea until experiments now under way can be completed.

"(8) That in case experiments now in progress be found [2028] unsatisfactory, or the process be found too costly, the city should adopt some other method of final disposition of garbage.

"(9) That a reduction plant for the final disposition of dead animals and offal be immediately constructed.

"(10) That a special study be made by the Street Cleaning Department of the problem of collection and transportation of all kinds of waste, so as to reduce this item of expense.

"(11) That the question of transportation by water and water front dumps be given similar study, so as to develop a type of scow which will permit the economical filling of low lands, as recommended.

"(12) That property be selected and acquired, where not already owned, at suitable locations, for the purpose of constructing water front dumps, or inland transportation, so as not to be dependent on contractors for such facilities.

"(13) That the city adopt the foregoing program as its general policy, and proceed to work out the details as fast as the means at their disposal will permit.

"(14) That the Street Cleaning Commissioner be authorized to secure the services of men equipped by training and experience to prepare detailed working plans and estimates of cost for all necessary equipment and plant to carry out this program.

"(15) That any immediate expenditure be confined to the [2029] purchase of motor trailer and floating equipment, to the purchase of sites, and the construction of water front and inland reclamation stations, and reduction works for dead animals and offal.

"The city waste disposal committee, in presenting this report, does so with the realization that it is in-

complete as to the final disposition of garbage, as well as with respect to the development of the remainder of the plan, but desires to state that it will hold itself in readiness to confer with the Commissioner of Street Cleaning during the preparation of the final plans by the experts to be employed, and to review and report upon these plans, to the end that they may be harmonized with the general procedure herein outlined." [2030] (Discussion of counsel.)

(The reports referred to, the Herring Report and the "Report of 1921" were received in evidence and marked, respectively, "Complainant's Exhibit No. 346" and "Complainant's Exhibit No. 347.") [2032] The system of incineration itself was developed in 1921. It was effectively developed at that time, so that it was practicable. There are recommendations in the Herring report. The recommendations that garbage be disposed of by reduction; that the ashes be used to fill; and that the rubbish be sorted out and then burned. [2033] It involved no dumping at sea. The Barren Island plant was ordered closed by the State Department of Health to the best of my belief. I have never seen the order, or official information to that effect. It was alleged to have been made sometime in 1918. [2034] I heard the testimony of Mr. Greene and Dr. Schroeder. I heard about a plant that had a capacity of 350 tons a day. I think the testimony on the existing plants was 300 or 320 tons a day. To build a plant of that size takes a year. The actual construction period would be a year, yes. That can be multiplied by any number of plants.

[2035] On *re-cross examination.* The system of reduction varies from incineration. I would not say the recommendation from the Herring report is no longer regarded as a satisfactory method for disposition of garbage, namely, reduction. There are quite a number of reduction plants in operation now. I would not say that incineration is now regarded as being the better of the two systems. I

should say they were good systems, both of them; it depends upon circumstances.

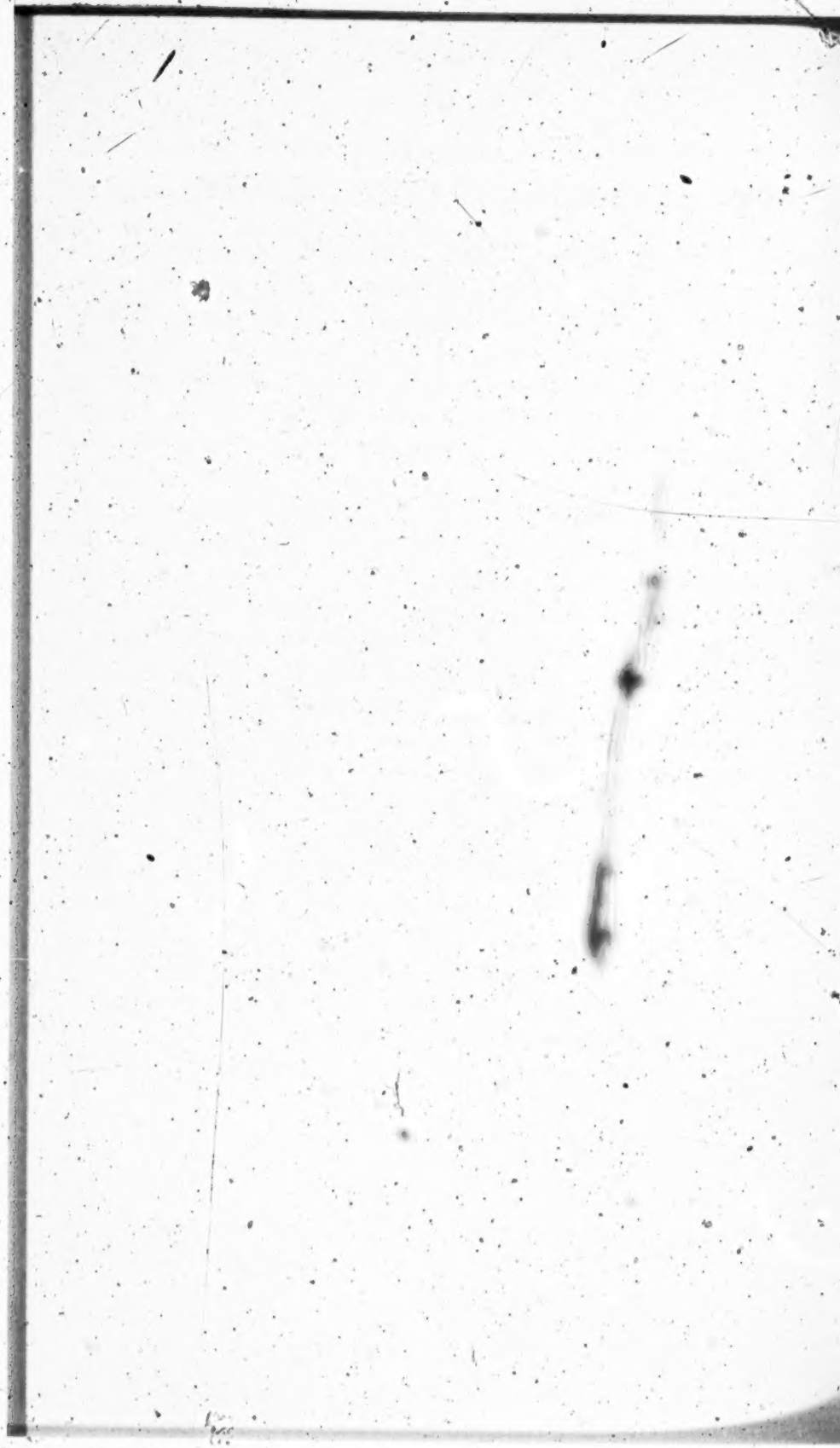
Those circumstances necessarily take into consideration the size of the community. Most of the reduction plants are in the larger communities. I would not say that a reduction plant is a better system than an incineration plant. [2036] It depends upon the local situation, as to which is best.

Reduction does not permit of destruction of rubbish mixed with the garbage. Incineration does permit the disposition, or the mixture, of both rubbish and garbage. That is one means of keeping down the cost of the destruction of the garbage—the rubbish which furnishes the fires with fuel. Reduction systems call for one or two central plants, as compared to local incineration plants, under the incinerator system. They should be constructed in larger units, generally speaking, than incinerators. [2037] I have never seen any report or study to determine whether or not incineration is the more perfect plan over reduction for the City of New York. The Herring report goes into that question, it considers incineration. The Herring report at the time was based upon a thorough study of the New York situation. I never thought Rudolph Herring was a great follower of the German systems. [2038] I would not say all of his views were very largely based upon a study of garbage disposal conditions in Germany and other countries abroad. [2039] (Discussion of counsel re sewer maps.)

For Defendant—Leigh E. Worthing, direct.

[2043] WITNESSES FOR THE DEFENSE.

LEIGH E. WORTHING. On *direct examination.* I have made investigation or research with respect to the sewerage system of the Long Branch private sewer. [2044] I went to Long Branch, as a matter of fact, in March 19th—or I do not remember the date, but it was the same date that I went to Asbury Park to get the map of Asbury Park. We went to Long Branch on this same occasion, and interviewed Mr. Ericcson, the Health Officer of Long Branch, and talked to him about sewage disposal of the Long Branch sewer company, and also concerning the municipal sewerage system. [2045] I asked for a map showing the sewer connections of the Long Branch sewer company, but was not able to obtain it. I subsequently went to Trenton, to the State Board of Health, and Mr. Croft, the engineer of the State Board of Health, was kind enough to show me a map of the Long Branch sewer company in the office of the State Board of Health. This map showed that the Long Branch—I did not make any physical examination and go out myself and see what was discharged. [2046] (Discussion of counsel as to testimony of the witness.)



SUPPLEMENTAL INDEX RELATING TO HEARING OF DECEMBER 5th, 1930.

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DEFENDANT'S WITNESSES.

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David C. Bowen		
direct examination	2095	
cross "	2096	
Otis R. Seaman		
direct examination	2099	
cross "	2102	

INDEX OF EXHIBITS.

DEFENDANT'S EXHIBITS.

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10	Engineer's Report relating to Long Branch Sewerage System	2102	666
11	Bill in equity in the Chancery Court of the State of New Jersey, November 10, 1930, in an action by the Dept. of Health of the State of New Jersey against the City of Asbury Park together with resolution and notice thereunto annexed	2103	666
12	Compilation from the records of the Dept. of Street Cleaning of the City of New York showing quantities of garbage dumped at sea by the defendant, years 1925-1929 inclusive	2104	666
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COMPLAINANT'S EXHIBIT.

348	Report of a commission, dated 1907 appointed by Mayor McClellan of New York City relating to disposition of garbage	2115	668

For Defendant—David C. Bowen, direct.

Hearing on Friday, December 5, 1930 before the Special Master.

Discussion between counsel and Special Master concerning *subpoena duces tecum* obtained by defendant [**2050-2094**].

DAVID C. BOWEN [**2095**], a witness for defendant, *direct examination.* I am Director of the State Department of Health of New Jersey. I was served with a *subpoena duces tecum* to produce a resolution dated September 14, 1926 of the State Department of Health directing the Long Branch Sewer Company to appear before the State Board of Health. (Resolution produced and discussion of counsel [**2096**] resulting in arrangement to have a certified copy made and received in evidence instead of original which was later done and copy was marked Defendant's Exhibit 9.) *Cross-examination.* [**2097**] Long Branch Sewer Company was a private company, and it appeared at the time directed and a number of hearings were held by the Board of Health.

By Mr. Minard.

Q. I say, was any official action taken as a result of the hearings?

A. I suppose there was official action, in that the Board made some motion or ruling as a result.

Q. Now, that motion or ruling would be in the minutes of the meeting?

A. It would.

Q. And do you recall whether the motion or ruling that was made disposed of the matter, or whether any action was taken to require the carrying out of any suggestion or [**2098**] finding of the Board?

Mr. Crowe. I object to that as calling for a conclusion, the best evidence being the official records of the Departments themselves——

The Special Master. One moment.

For Defendant—David C. Bowen, direct.

Mr. Minard. I am not going to ask him what the resolutions were. I will produce those; but I have asked him whether there were any that are to be produced.

The Special Master. I think so.

Mr. Crowe. If he just wants him to testify that there was action taken, and if the Attorney General of New Jersey will produce copies of those rulings or motions which set forth the action taken, I have no objection.

By Mr. Minard.

Q. Well, I ask you now—I will try it over again—what I was about to ask before the interruption: Whatever action the Board took after the hearings, or at the close of the hearings, is that the last action that the Board has taken with reference to Long Branch?

A. Well, if this would be an answer, the last action taken by the Board will appear in the minutes.

Q. Yes. Do you remember whether that was back in 1926?

A. I am not definite about that, but I think it has been before the Board since that time.

[2099] Q. Now, has any action been taken by the Board in considering the suit brought in chancery under the act?

Mr. Crowe. I will now just make another interruption, to interpose the same objection that I made before, that the record is the best evidence.

Mr. Minard. All right. I will merely say, then, that I ask leave to produce whatever resolution or official action of the Board was taken at the close of the hearings when the application was disposed of, or, at least, as far as it was disposed of. That is all I want to put in.

The Special Master. Is there any objection to that?

Mr. Crowe. No; I would like to get these resolutions myself. I wanted to get them this morning. And if I had been able to get them when I was down there, we would have had them here this morning.

Mr. Minard. We will get them.

Otis R. Seaman—direct.

OTIS R. SEAMAN, *direct examination.* I am the city engineer of the municipality of Long Branch and was served with a subpoena *duces tecum* to produce a certain report [2102] from the city records of Long Branch. (A photostatic copy of the report which was made by a firm of engineers relating to the Long Branch Sewer system was received in evidence and marked Defendant's Exhibit 10.) *Cross examination.* I procured the report referred to from the possession of Mr. Clyde Potts (an engineer in New York City). [2103] There was received in evidence, marked Defendant's Exhibit 11, a bill in equity in the Chancery Court of New Jersey in an action entitled "Department of Health of the State of New Jersey, complainant, against Asbury Park, a municipal corporation", filed November 10, 1930, together with resolution and notice thereto annexed. A record or compilation from the annual reports and records of the Department of Street Cleaning of the City of New York showing quantities of garbage dumped at sea by the City of New York for a period of five (six) years [2104] was received in evidence and marked Defendant's Exhibit 12.

Discussion between counsel and Special Master as to the relevancy and materiality of a letter offered by the defendant from the Chief of Engineers of the War Department concerning dumping of garbage at sea by other municipalities than the City of New York. Letter received over the objection of the plaintiff that even if certain other cities dumped garbage that would not be an excuse for a commission of a public nuisance by the City of New York [2105-2109]. (Letter referred to received in evidence and marked Defendant's Exhibit 13.)

Otis R. Seaman—direct.

"WAR DEPARTMENT
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON

June 12, 1930.

Honorable John J. Boylan,
House of Representatives,
Washington, D. C.

[2110] Dear Mr. Boylan:

1. Receipt is acknowledged of your letter of June 9, 1930, requesting information concerning the dumping of garbage at sea.

2. In reply I would inform you that the following cities are dumping garbage at sea under Water (War) Department permits:

City of Miami Beach, Florida—Atlantic Ocean.
Town of Mt. Desert, Maine—Frenchmans Bay.
City of Newport, Rhode Island—Atlantic Ocean.

The City of New York is also dumping garbage at sea under permits issued by the Supervisor of New York Harbor in accordance with the provisions of the Act of Congress approved June 29, 1888, as amended by Act approved May 28, 1908.

3. This office has no record of any city dumping garbage at sea without a permit issued by the War Department, other than the City of Oakland, California.

Very respectfully,

(signed) LYTLE BROWN
Major General, Chief of Engineers."

[2111] (Map or plan entitled "Sewerage System of the Long Branch Sewer Company" offered by defendant was received in evidence and marked Defendant's Exhibit 14.)
[2113] Discussion of counsel relative to report of engi-

neers made in 1907 relative to garbage disposal by the City of New York, consisting of 241 pages, and it was agreed that the plaintiff would photostat those pages which were considered material to its case and subject to the right of the defendant to put in any additional portion that he wanted to go in. [2115] (Report referred to was received in evidence and marked Complainant's Exhibit 348.)

Further discussion between counsel and Special Master, wherein the Special Master requested respective counsel to submit to him [2116] proposed findings of fact and conclusions of law and also briefs supporting the contentions of the parties. [2117] Hearing adjourned for the purpose of making oral arguments before the Special Master on February 4, 1931 at 10 o'clock.

FILE COPY

Office Supreme Court, U
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MAY 22 1929
CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] Original. 1910

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

Motion for Leave to File Bill of Complaint and Bill of Complaint.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Arthur W. Cross, Law Printer, 35-37 Lafayette Street, Newark, N. J.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

NOTICE.

TO:

Hon. James J. Walker, Mayor and
Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York.

SIRS:

Please be advised that on Monday, May 13, 1929, the plaintiff will apply to the Court for leave to file its bill of complaint, a copy of which is annexed hereto.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Dated: May 6, 1929.

Motion.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

IN EQUITY.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its bill of complaint herewith submitted.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Statement.

The purpose of this suit is to restrain the defendant from committing a nuisance causing damage to the property of the plaintiff and its citizens and a menace to the health of its inhabitants, by dumping garbage and refuse in the Atlantic Ocean off the coast of the plaintiff.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Proof of Mailing Notice.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY,
Plaintiff.

vs.

THE CITY OF NEW YORK,
Defendant.

PROOF OF MAILING COPIES OF MOTION AND BILL OF COMPLAINT.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

Vera E. Castellano, of full age, being duly sworn according to law, on her oath deposes and says:

1. On May 7, 1929, in the Post Office in the City of Newark, New Jersey, I deposited in sealed envelopes with the postage thereon by registered mail prepaid, a true printed copy of the annexed motion, notice and bill of complaint addressed to each of the following persons:

Hon. James J. Walker, Mayor, of the City of New York, City Hall, Borough of Manhattan, New York City, N. Y.

Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York, Municipal Building, Borough of Manhattan, New York City, N. Y.

VERA E. CASTELLANO.

Sworn and subscribed before me
this 7th day of May, 1929.

JOHN J. GAFFEY,
Attorney at Law of N. J.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. , Original.

STATE OF NEW JERSEY, *Plaintiff,*

vs.

THE CITY OF NEW YORK, *Defendant.*

IN EQUITY.

BILL OF COMPLAINT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The plaintiff, State of New Jersey, by its Attorney-General, brings its bill of complaint against the defendant, The City of New York, and alleges and shows:

I.

1. The plaintiff is a State of the Union having its Capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution, including the power and duty to protect and preserve to its citizens certain natural and unalienable rights, including the acquisition, possession and protection of property and of pursuing and obtaining safety and happiness. This

suit is instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof, for the use and benefit of the plaintiff as the owner of the property hereinafter mentioned and also as *parens patriae* for the use and benefit of its citizens. Annexed hereto as Exhibit "A" and made a part hereof is a map showing certain geographical and other information referred to in this bill of complaint.

2. The defendant, The City of New York, is a body politic and corporate, organized and existing under and by virtue of the laws of the State of New York, under and by the authority of which it exercises the powers of local administration and government as a political subdivision of said State, having its seat of government in the Borough of Manhattan, in the City, County and State of New York.

II.

3. The jurisdiction of this Court depends upon the ground that this is a suit in which a state is a party, within the provisions of Article III, Section 2, of the Constitution of the United States.

III.

4. From Atlantic Highlands southerly to Cape May, a distance of more than 100 miles, the easterly side of the State of New Jersey borders on the Atlantic Ocean. The portion of this Ocean frontage particularly affected by the acts of the defendant hereinafter complained of extends from Atlantic Highlands to Beach Haven, a distance of more than fifty miles, and is occupied by a continuous succession of adjoining municipalities, which, by reason of their broad and gently sloping beaches, are adapted to, and their inhabitants are engaged in and rely for their

livelihood chiefly upon, the business of maintaining summer resorts, where great numbers of people of all classes and conditions congregate from various parts of the United States in the pursuit of rest, recreation and pleasure.

5. The plaintiff possesses the sovereign ownership of lands along the shore and under the waters of the Atlantic Ocean below high water mark throughout its beach front within its territorial limits, and the use of said beaches and the waters adjacent thereto are common to all the people of the State.

6. Said seashore is famous throughout the United States as a summer resort, and is improved by piers and wharves which are used for public recreation, commerce and fisheries, and by pavilions and bathing beaches and other conveniences used for the health, recreation and pleasure of the citizens of the plaintiff, and others who resort thereto for such purposes. Along the seashore and for several miles landward the territory is improved by hotels, pleasure resorts, country clubs, private residences and magnificent estates, provided and maintained at great expense by or for the benefit of summer visitors and residents.

7. The waters of the ocean adjacent to said shore and beaches are largely used for surf bathing and also for pleasure boating, fishing and other purposes. More than a hundred million dollars have been invested within the beach section particularly affected by the acts of the defendant hereinafter complained of, in hotels, bathing pavilions, landing and pleasure piers, boardwalks, shore boulevards, and other appurtenant facilities for pleasure, recreation and profit and several thousand persons are constantly employed to maintain and operate the same.

8. The section of the sea coast in question lies between the two great metropolitan areas of New York City

and Philadelphia, containing an aggregate population in excess of 12,000,000 people, and all parts thereof are within convenient commuting distance for daily travel by rail or motor vehicles from one or the other of said metropolitan areas. Many thousands of persons live along said seashore during the summer months, and commute daily to their places of business. Said seashore is visited by thousands of excursionists daily during the summer months, and also by many thousands of visitors over holidays and week-ends.

9. The growth, prosperity, and substantial property values of the seashore communities in question have resulted entirely from enterprises dependent upon the popularity and suitability of said waters, beaches and shorefront facilities for fishing, boating, bathing and other seashore recreations and pursuits, and the continuance of these advantages depends primarily upon the ability of the plaintiff, its municipalities and its citizens to keep the waters of the shore and bays pure and wholesome, and the beaches, public highways and shorefront property free from pollution, contamination and unsightly or unhealthy conditions.

10. Along the beach section in question are located more than a hundred fish pounds constructed under licenses issued by the plaintiff, and maintained by its citizens, who have invested therein approximately $700,000. During the year 1928 said fish pounds yielded approximately twenty million pounds of fish having a value of nearly one million dollars. Approximately 500 men are constantly employed in said industry.

11. The defendant, the City of New York, has a population of more than 6,000,000 people, which is increasing at the rate of approximately 136,000 persons annually. Said defendant disposes of its garbage and other refuse

by loading the same upon barges, which are towed out and dumped into navigable waters of the United States, off the coast of the plaintiff.

12. As the population and commerce of said defendant increases the amount of garbage and refuse thus disposed of constantly increases and at the present time many barge loads are thus disposed of daily.

13. Said garbage and refuse consist of all manner of domestic and industrial waste of a substantial nature, including boxes, crates, tin cans, bottles (empty, or containing drugs, medicines or chemicals), papers, rags, discarded household and toilet articles, dead domestic animals, mattresses, decayed or unmarketable fruits, vegetables, meats and fowls, the sweepings and refuse of public streets and markets, victuals and other vegetable and animal fragments from residences, hotels and resitaurants; much of which garbage and refuse is in a putrid and decayed condition.

14. A considerable proportion of said garbage and refuse floats upon or beneath the surface of the sea in huge masses or islands, which obstruct and impede the navigation of fishing boats and other craft, until it is driven by winds and tides upon the beaches of the plaintiff, and cast by the waves into heaps and windrows thereon and under, over and about the piers, wharves and pavilions, adjacent boulevards and private property, where it decays and pollutes the sea and land, unless and until removed and disposed of by the municipalities or their citizens.

15. The removal and disposition of said accumulated garbage and refuse from the beaches, boulevards and other public places requires an expenditure by said municipalities of more than $100,000 per annum, and additional large sums by the citizens of the plaintiff to clean and

repair their private property of the filth and damage inflicted thereby.

16. Said garbage and refuse so co-mingled with the waters of the shore and cast upon the beaches and property of the plaintiff and its citizens is poisonous and otherwise injurious to human beings and to fish and other forms of marine life; obstructs and impedes the navigation of the waters of the United States; clogs, tears, injures and destroys the nets of the fish pounds; and renders the waters noxious and offensive and unfit for fishing, boating or bathing.

17. The dumping of said garbage and refuse by the defendant creates a public nuisance which seriously impairs the usefulness, wholesomeness and safety of said waters, beaches and shore front facilities, and of the property of the plaintiff, said municipalities and their citizens, and thereby greatly damages the property and seriously menaces the health, safety and welfare of the plaintiff and its citizens.

18. Said acts of the defendant are repeated and continued from day to day and, unless restrained, will be repeated and continued in perpetuity, to the manifest and irreparable injury of the health, safety, comfort, property and welfare of the plaintiff and its citizens and to others lawfully within the borders of the State, and the plaintiff is without any adequate remedy at law in the premises.

19. Said acts of the defendant takes the property of the plaintiff and its citizens without due process of law in violation of Article XIV, Section 1, of the Constitution of the United States.

20. Said acts of the defendant regulates and destroys the commerce of the plaintiff and its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

21. Said acts of the defendant deprive the plaintiff and its citzens of the natural advantages of their position along the seashore, contrary to the soverign rights of the plaintiff as a member of the Union.

22. Said acts of the defendant violate Title 33, Chapter 9, Section 407 of the United States Code (approved June 30, 1926) and other laws of the United States.

23. Said acts of the defendant are otherwise detrimental to the interests of the plaintiff and its citizens.

IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said defendant, the City of New York, may to the best and utmost of its knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, perpetually restraining and enjoining it, its contractors, officers, agents and employees, and all other persons acting or claiming or assuming to act under its authority, from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the Ocean or other waters of the United States off the coast of New Jersey, and from

otherwise defiling or polluting said waters and beaches, or procuring them to be defiled or polluted as aforesaid;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, commanding it, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honors in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

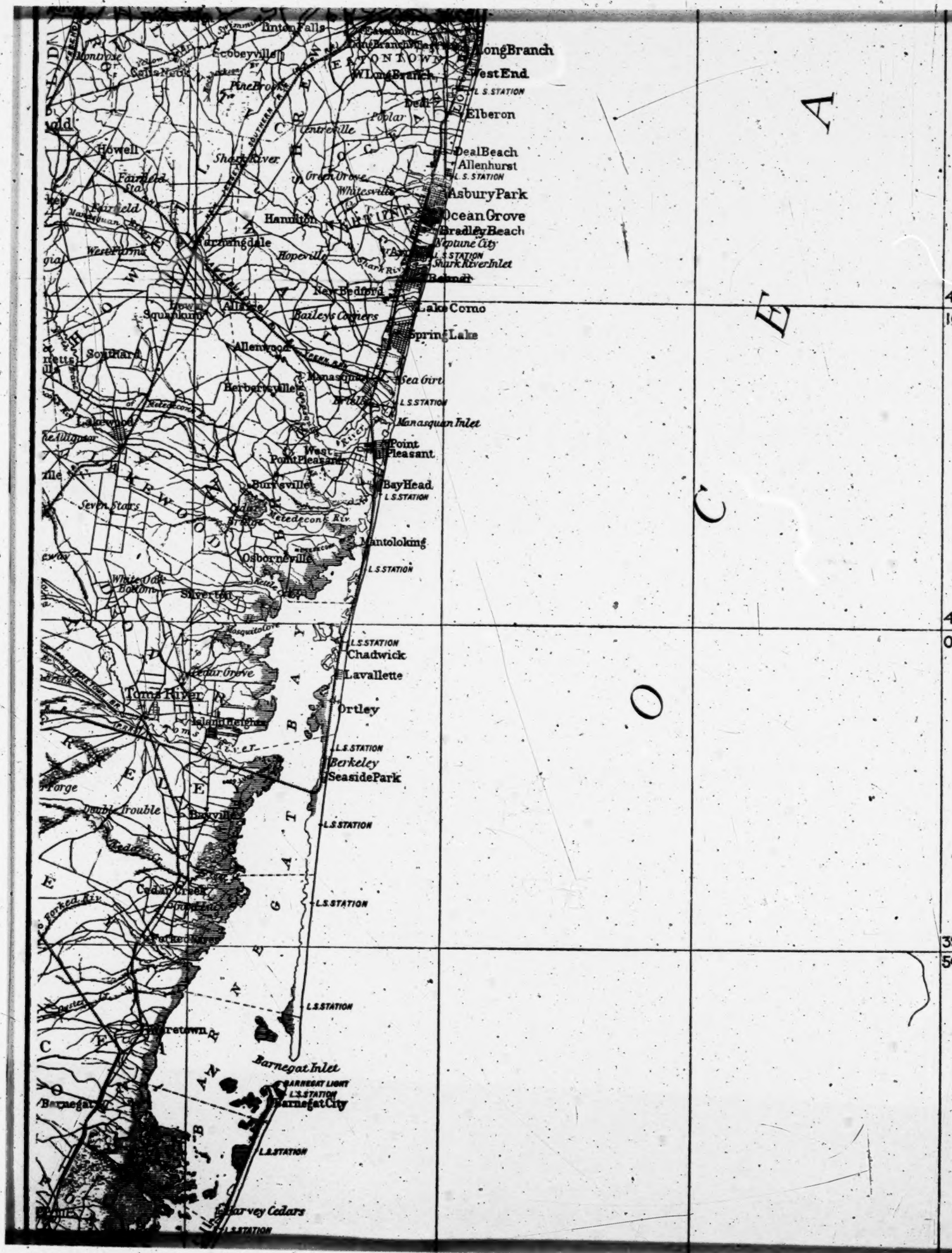
And the plaintiff, as in duty bound, will ever pray, etc.

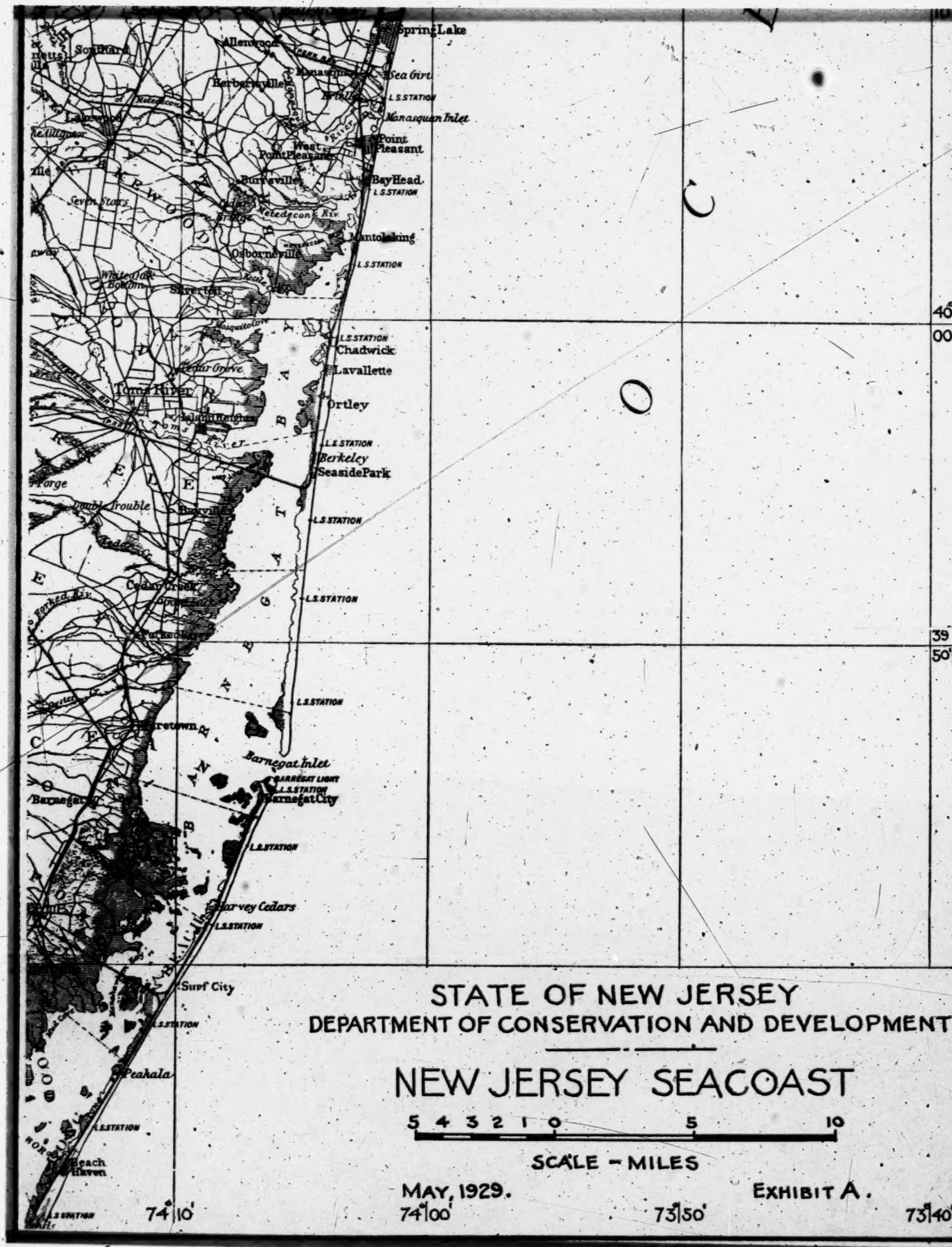
STATE OF NEW JERSEY,

By WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

NEW YORK BAY
RARITAN BAY
SANDY HOOK BAY
LONG ISLAND
QUEENS
KINGS
RICHMOND
STATEN ISLAND
NEW JERSEY
Jamaica
Flushing
Whitestone
College Point
Great Neck
Manhasset
Astoria
Woodside
Winfield
Newtown
Maspeth
Middle Village
Creedmoor
Queens
Foster's Meadow
Springfield
East New York
Valley Stream
Flatbush
Brighton
Bay Ridge
Stapleton
Flatlands
Ft. Hamilton
New Springville
Clifton
Graves End Bay
Gravesend
Coney
Manhattan Beach
Far Rockaway
Rockaway Beach
Upper Quarantine
Lower Quarantine
Richmond
New Dorp
Great Kills
Rossville
Woodrow
Totowville
Red Bank
Pleasant Plains
Prince's Bay
Great Beds Light
Ambrose Channel
Gedney's Channel
South Channel
East Bank
Fourteen Ft. Chan
Main Channel
Flora's Knoll
Sandy Hook Light
Sandy Hook Light Vessel
Scotland Light Vessel
Sandy Hook Pilot
Atlantic Highlands
Navesink Beach
Seabright
Monmouth Beach
North Long Branch
Long Branch
West End
Elberon
Deal Beach
Allenhurst
Little Silver
Red Bank
Matawan
Keyport
Middletown
Freehold
Holmdel
Marlboro
Howell
Lakewood
Toms River
Point Pleasant
Asbury Park
Ocean Grove
Belmar
Manasquan
Spring Lake
Sea Girt
Brielle
Union Beach
Keansburg
Port Monmouth
Leonardville
New Monmouth
Colts Neck
Morganville
Marlboro
Englishtown
Manalapan
Jackson
Lakehurst
Whiting
Barnegat
Tuckerton
Little Egg Harbor
Beach Haven
Long Beach Island
Barnegat Light
Absecon
Atlantic City
Ventnor
Margate
Longport
Somers Point
Ocean City
Cape May
Wildwood
Cape May Point
Delaware Bay
Cape May Light
Five Fathom Bank
Brigantine Shoals
Absecon Light
Barnegat Bay
Great Egg Harbor Bay
Great Egg Harbor River
Mullica River
Tuckerton Creek
Manahawkin Bay
Little Egg Harbor Bay
Toms River
Metedeconk River
Manasquan River
Shark River
Navesink River
Shrewsbury River
Raritan River
Arthur Kill
Kill Van Kull
Newark Bay
Hackensack River
Passaic River
Hudson River
East River
Harlem River
Bronx Kills
Flushing Bay
Jamaica Bay
Rockaway Inlet
The Narrows
Ft. Tompkins Light
Prince's Bay Light
Robbins Reef Light
Governors Is.
Ellis Is.
Bedloes Is.
Oyster Is.
Hoffman Is.
Swinburne Is.
Pralls Is.
Shooters Is.
Staten Island
Bayonne
Elizabeth
Linden
Rahway
Perth Amboy
Carteret
Woodbridge
Metuchen
Edison
New Brunswick
Piscataway
Dunellen
Plainfield
Scotch Plains
Fanwood
Westfield
Cranford
Roselle
Roselle Park
Union
Kenilworth
Irvington
Newark
Harrison
Kearny
Jersey City
Hoboken
Weehawken
Guttenberg
North Bergen
Secaucus
Union City
West New York
Edgewater
Fort Lee
Cliffside Park
Ridgefield Park
Little Ferry
Moonachie
Carlstadt
East Rutherford
Rutherford
Lyndhurst
Nutley
Belleville
Bloomfield
Glen Ridge
Montclair
Orange
East Orange
West Orange
South Orange
Maplewood
Millburn
Short Hills
Summit
Chatham
Madison
Morristown
Morristown Junction
Whippany
Florham Park
Hanover
Parsippany
Boonton
Denville
Dover
Rockaway
Mount Hope
Mount Arlington
Lake Hopatcong
Netcong
Stanhope
Andover
Newton
Sparta
Ogdensburg
Franklin
Hamburg
Wantage
Sussex
Branchville
Augusta
Deckertown
Hardyston
Vernon
Greenwood Lake
Warwick
Florida
Pompton Lakes
Pompton Plains
Wayne
Paterson
Passaic
Clifton
Garfield
Lodi
Wallington
Rutherford
Carlstadt
Secaucus
Jersey City
Hoboken
Weehawken
Guttenberg
North Bergen
Union City
West New York
Edgewater
Fort Lee
Cliffside Park
Ridgefield Park
Little Ferry
Moonachie
Carlstadt
East Rutherford
Rutherford
Lyndhurst
Nutley
Belleville
Bloomfield
Glen Ridge
Montclair
Orange
East Orange
West Orange
South Orange
Maplewood
Millburn
Short Hills
Summit
Chatham
Madison
Morristown
Morristown Junction
Whippany
Florham Park
Hanover
Parsippany
Boonton
Denville
Dover
Rockaway
Mount Hope
Mount Arlington
Lake Hopatcong
Netcong
Stanhope
Andover
Newton
Sparta
Ogdensburg
Franklin
Hamburg
Wantage
Sussex
Branchville
Augusta
Deckertown
Hardyston
Vernon
Greenwood Lake
Warwick
Florida
Pompton Lakes
Pompton Plains
Wayne
Paterson
Passaic
Clifton
Garfield
Lodi
Wallington
Rutherford
40° 30'
40° 20'


Long Branch
West End
Elberon
Deal Beach
Allenhurst
Asbury Park
Ocean Grove
Bradley Beach
Neptune City
Shark River Inlet
Belmar
Lake Como
Spring Lake
Sea Girt
Manasquan Inlet
Point Pleasant
Bay Head
Mantoloking
Chadwick
Lavallette
Ortley
Berkeley
Seaside Park
Barnegat Inlet
Barnegat Light
Barnegat City
Harvey Cedars
Toms River
Forked River
Cedar Creek
Double Trouble
Island Heights
Cedar Grove
Silverton
Osbornville
Burrsville
Berbarysville
Allaire
Squankum
Hopeville
Hanmton
Whitesville
Green Grove
Centerville
Poplar
Pine Brook
Ecobeyville
Union Falls
Howell
Farmingdale
New Bedford
Bailey's Corners
Allenwood
Lakewood
Seven Stars
Cedar Bridge
Metedeconk River
Manasquan River
Shark River
Yellow Frame
Cell Neck
Monmouth
Jackson
Manchester
Lakehurst
Fairfield
Sta
Fairfield
Manasquan River
West Farms
Southard
Sea Girt
L.S.STATION
Chadwick
Lavallette
Ortley
Berkeley
Seaside Park
Barnegat Inlet
Barnegat Light
Barnegat City
Harvey Cedars
Point Pleasant
Bay Head
Mantoloking
Osbornville
Silverton
Burrsville
Berbarysville
Allaire
Squankum
Allenwood
Lakewood
Toms River
Island Heights
Cedar Grove
Forked River
Cedar Creek
Double Trouble
Beachville
Forge
Waretown
Harvey Cedars
Barnegat City
Barnegat Inlet
Barnegat Light
Seaside Park
Berkeley
Ortley
Lavallette
Chadwick
Bay Head
Point Pleasant
Manasquan Inlet
Sea Girt
Spring Lake
Lake Como
Bradley Beach
Neptune City
Shark River Inlet
Belmar
Asbury Park
Ocean Grove
Deal Beach
Allenhurst
Elberon
West End
Long Branch
Eatontown
Wall
Howell
Freehold
Manalapan
Monmouth
Ocean
Burlington
Atlantic
Middlesex
Union
Essex
Hudson
Bergen
Passaic
Morris
Sussex
Warren
Hunterdon
Somerset
Mercer
Camden
Gloucester
Salem
Cumberland
Cape May
Delaware Bay
Atlantic Ocean
L.S.STATION



STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT

NEW JERSEY SEACOAST

5 4 3 2 1 0 5 10

SCALE - MILES

MAY, 1929.

EXHIBIT A.

FILE COPY

FILED
MAY 22 1929
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] Original [redacted]

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

MEMORANDUM ON BEHALF OF THE CITY OF NEW YORK WITH REGARD TO THE APPLICATION OF THE STATE OF NEW JERSEY FOR LEAVE TO FILE A BILL OF COMPLAINT.

The City of New York, now and at all times hereafter saving to itself all and all manner of benefit by objection, exception or otherwise that can or may be taken to the many errors, uncertainties and imperfections in the plaintiff's proposed bill of complaint herein contained, submits itself and its interests, upon the plaintiff's application, to the protection of this Honorable Court.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the proposed defendant,
The City of New York.

J. Joseph Lilly,
of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. , Original

STATE OF NEW JERSEY, Plaintiff, *against* THE CITY OF NEW YORK, Defendant.	IN EQUITY.

MOTION FOR LEAVE TO FILE.

Comes now The City of New York, by its Corporation Counsel, and asks leave of this Court to file the annexed and herewith submitted memorandum upon the hearing and determination of the application of the State of New Jersey for leave to file a bill of complaint in a cause in equity to be entitled as above.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for The City of New York.

FILE COPY

JUN 10 1929

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1928

No. [redacted], Original [redacted]

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

In the Supreme Court of the United States

OCTOBER TERM—1928.

No. 21, Original.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

Notice.

To:

Hon. WILLIAM A. STEVENS,
Attorney General of the State of New Jersey,

Hon. DUANE E. MINARD,
Assistant Attorney General of the State of New Jersey,

Solicitors for Plaintiff.

Sirs:

Pleased be advised that on Monday, June 10, 1929, the defendant, The City of New York, will apply to the Court for leave to file its answer herein, a copy of which is annexed hereto, and for the relief prayed for in the annexed motion.

Dated, June 8, 1929.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1928.

No. 21, Original.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

IN EQUITY.

Motion for Leave to File Answer.

Comes now The City of New York, by its Corporation Counsel and Solicitor, and ask leave of the Court that its answer, herewith submitted, to the bill of complaint herein, be received and filed.

Dated, June 8, 1929.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1928.

No. 21, Original.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

Answer of the Defendant, The City of New York.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now, comes the defendant, The City of New York, by Arthur J. W. Hilly, its Corporation Counsel and its Solicitor herein and, reserving all manner of benefit by objection, exception or otherwise to the many defects, errors, insufficiencies, imperfections and discrepancies in the plaintiff's Bill of Complaint contained, for its answer to the said Bill of Complaint the defendant, The City of New York, respectfully shows to the Court and alleges as follows:

First—That is is without knowledge as to all and singular the allegations contained in that item or division of the Bill of Complaint which is designated "I.", except as to so much thereof as alleges or purports to

allege that the plaintiff is one of the States of the United States of America having its Capitol and seat of Government at the City of Trenton in the State of New Jersey, and except as to the allegations contained in that paragraph or section thereof which is numbered "2".

As to the item or division of the Bill of Complaint which is designated "III," the defendant, The City of New York, says:

Second—That it denies all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 12, 13, 14, 17, 18, 19, 20, 21, 22 and 23.

Third—That it is without knowledge as to all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 4, 5, 6, 7, 8, 9, 10, 15 and 16, and therefore denies the same.

Fourth—That it denies all and singular the allegations contained in the paragraph or section of the Bill of Complaint which is numbered 11 except as to so much thereof as alleges that the defendant, The City of New York has a population of more than 6,000,000 people which is continuously increasing.

Further answering and for a first defense, the defendant, The City of New York, further alleges:

Fifth—That the bill of complaint herein does not state facts sufficient to constitute a cause of action in equity, nor any matter of equity entitling the plantiff to the relief prayed for or to any relief nor are the facts stated in the bill of complaint sufficient to entitle the plaintiff to any relief against the defendant.

Wherefore, the defendant, The City of New York, prays judgment that the Bill of Complaint herein be dismissed and that it be hence dismissed with its costs and disbursements in this cause sustained and for such other and further relief to this defendant as to the Court may seem meet and proper in the premises.

THE CITY OF NEW YORK,
By ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

J. JOSEPH LILLY,
Of Counsel.

FILE COPY

Office Supreme Court, U.
FILED
OCT 2 1929
CHARLES ELMORE CRO
CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. [redacted]riginal[redacted]

B 1210

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant,

Motion for Leave to File a Reply, and for the Appointment of a Special Master, and Reply.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.
State House, Trenton, N. J.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant,

NOTICE.

TO:

Hon. Arthur J. W. Hilly, Corporation Counsel,
Solicitor for Defendant.

SIR:

Please be advised that on Monday, October 7, 1929, the plaintiff will apply to the Court for leave to file its reply, a copy of which is annexed hereto, and for the appointment of a Special Master.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

Dated October 25, 1929.

Service hereof is acknowledged this 26th day of September, 1929.

ARTHUR J. W. HILLY,
Solicitor for Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant,

IN EQUITY.

MOTION FOR LEAVE TO FILE A REPLY AND FOR THE APPOINTMENT OF A SPECIAL MASTER.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its reply, herewith submitted, and also for the appointment of a Special Master to take testimony and prepare and file his findings, with recommendations for a decree herein.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

October 7, 1929.

Reply.

IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1920.

No. 18, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant,

IN EQUITY.

REPLY.

The plaintiff joins issue on the answer of the defendant.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

FILE COPY

Office Supreme Court, U. S.
FILED
OCT 7 1929
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States,

OCTOBER TERM, 1929.

No. [redacted] ORIGINAL [redacted] 10 13 12

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

DEFENDANT'S MEMORANDUM ON PLAINTIFF'S MOTION FOR THE APPOINTMENT OF A SPECIAL MASTER AND FOR OTHER RELIEF.

The defendant does not oppose the plaintiff's application for the appointment of a Special Master herein, if, upon the papers previously filed in this cause, the Court deems it advisable to appoint a Master herein.

The defendant does however urge that the Master, who may be appointed, should not be a citizen or resident of either the plaintiff or the defendant.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

J. JOSEPH LILLY.

FILE COPY

FILED
JAN 30 193
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1929.

[redacted] No. 10, Original.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

MOTION FOR LEAVE TO FILE AMENDED ANSWER AND TO WITHDRAW ANSWER PREVIOUSLY FILED.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

Minnick Press, 77-79 Beekman Street, New York City

IN THE

Supreme Court of the United States

OCTOBER TERM—1929.

STATE OF NEW JERSEY, Plaintiff, against THE CITY OF NEW YORK, Defendant.	No. 18, Original.

NOTICE.

To:

Hon. WILLIAM A. STEVENS,
Attorney General of the State of New Jersey;

Hon. DUANE E. MINARD,
Assistant Attorney General of the State of New Jersey,
Solicitors for the Plaintiff.

SIRS:

PLEASE BE ADVISED that on Monday, February 2d, 1931, the defendant, The City of New York, will apply to the above named Court for leave to file its Amended Answer herein, a copy of which is annexed hereto, and for the relief prayed for in the annexed motion.

Dated, January 27, 1931.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1929.

STATE OF NEW JERSEY, Plaintiff, against THE CITY OF NEW YORK, Defendant.	No. 18, Original.

IN EQUITY.

MOTION FOR LEAVE TO FILE AMENDED ANSWER AND TO WITHDRAW ANSWER PREVIOUSLY FILED WITHOUT PREJUDICE TO PROCEEDINGS ALREADY HAD.

Comes now the defendant, The City of New York, by its Corporation Counsel and Solicitor, and shows as follows, to wit:

1. That pursuant to leave of this Court granted in May, 1929, the State of New Jersey filed in this Court a Bill of Complaint against the defendant, The City of New York, praying that this Court issue its writ of injunction perpetually restraining the defendant, its contractors, officers and agents and employees from dumping or suffering to be dumped any garbage, refuse or other noxious, offensive or injurious matter into the Atlantic Ocean or other waters of the United States off the coast of New Jersey and from otherwise defiling or polluting said waters and the beaches of said state.

2. That the suit in equity of the State of New Jersey so permitted by this Court to be commenced was docketed as

No. 21, Original, October Term, 1928, and is now docketed as No. 18, Original, October Term, 1929.

3. That this Court's subpoena to answer the aforesaid Bill of Complaint was issued therefrom in May, 1929, and was received by The City of New York.

4. That in response to said subpoena the defendant, The City of New York, applied on June 8, 1929, to this Court for leave to answer said Bill of Complaint, and thereafter on or about June 10, 1929, in response to leave so granted filed in the office of the Clerk of this Court its answer to said bill and the plaintiff was duly served therewith.

5. That it appears through the inability of the Assistant in the office of the defendant's solicitor, the Corporation Counsel of the City of New York, assigned to draw defendant's answer, to ascertain the controverting facts on which defendant's defense was in part to be based, the answer filed by the defendant consisted practically of a general denial only. Such form of answer is authorized and provided for by the public statutes of the State of New York, namely, Section 261 of the Civil Practice Act of said state, and, possibly, by Equity Rule No. 30, of the Rules of this Court.

6. That thereafter and on October 7, 1929, plaintiff moved this Court for leave to file its reply to said answer and for the appointment of a special master to take testimony and prepare and file his findings with recommendations for a decree in this cause, and pursuant to leave duly granted in response to said motion, plaintiff filed its said reply in this Court by joining issue on the answer of the defendant and a special master, namely, the Honorable Edward K. Campbell, was appointed by order of this Court on or about October 14, 1929, to take testimony, to make findings of fact and conclusions of law and to submit the same to this Court with his recommendations for a decree.

7. That thereafter and on or about December 11, 1929, hearings for the taking of testimony in this cause were commenced before said Special Master and were continued on different days from time to time, the last hearing having been held on the 5th day of December, 1930. Very briefly the contention of the plaintiff was that the defendant dumped garbage and refuse into the navigable waters of the United States off the coast of New Jersey; that such garbage and refuse was carried by the winds and tides into the waters of the plaintiff and onto its beaches in great quantities, thereby injuring the plaintiff's property and that of its citizens and costing them large sums of money, each and all in respect of fishing, bathing, navigation and commerce, and seriously menacing the health, safety and welfare of the plaintiff and its citizens. Other contentions were also made. The defendant denied that it dumped its garbage and refuse into the navigable waters of the United States and on the hearings before the Special Master, entirely without objection from ~~defendant's~~ pltff's counsel and solicitor (on the ground that it was not pleaded or on any ground) evidence was offered and received to the effect that said defendant had been accustomed for many years to dump and had dumped a certain percentage of its garbage and refuse into the high seas at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12½ and 22 miles from the New Jersey coast under permit from the United States Supervisor of the Harbor of New York issued in accordance with the provisions of Sections 441, 443, 449 and 451 (Title 33, Chapter 9, United States Code Annotated, approved June 30, 1926), and prior statutes upon which based; and that garbage and refuse in large quantities had for many years been dumped into the ocean from steamships and from scows and vessels owned by private contractors and by the United States Navy Yard authorities, or persons employed by them at points from 3 to 25 miles from the New Jersey coast, and that unsanitary sewage had for a number of years last past been discharged into the ocean a short distance from the shore, and from the

inadequate sewers of the New Jersey coast cities of Long Branch and Asbury Park.

8. That when the above mentioned testimony was offered on hearings, plaintiff's counsel and solicitor made no objection thereto, nor to the offer thereof, on the ground of surprise or failure, to plead it, as aforesaid, although defendant's answer did not plead in particular words such matters as defences.

9. That defendant's counsel and solicitor deems it advisable that its answer should conform to the above mentioned evidence, notwithstanding the lack of objection thereto by plaintiff on the hearings; that said hearings for the taking of testimony have been closed and it is not the desire of the defendant to reopen the same for the taking of further testimony; that although the date set for the submission of proposed findings of fact and conclusions of law, briefs, and argument thereon before the Special Master, is the 4th day of February, 1931, action on this motion need not greatly delay these proceedings, and that at most a few weeks will be all the adjournment necessary.

10. That this motion is not made for the purpose of delay, but in order to safeguard the proved interests of the defendant, and that provision can be made in the order of this Court that the plaintiff's reply (consisting only of the statement that "the plaintiff joins issue on the answer of the defendant") to the original answer may, if desired, be deemed the reply to the amended answer and that all proceedings heretofore taken may be regarded as having been taken as if the amended answer hereto attached and requested to be filed had been originally filed, and defendant's counsel and solicitor so consent.

11. That no substantial right of the plaintiff will be injuriously affected by the granting of this motion. The same

is made on all the pleadings and papers on file in the office of the Clerk of the Supreme Court in this cause and on the papers submitted herewith and upon the record of the testimony taken on the hearings before the Special Master, when and if filed.

12. Defendant, therefore, through its said solicitor and counsel, prays that, in furtherance of substantial justice, and in accordance with the provisions of Title 28, Chapter 18, Section 777 of the United States Code, Annotated (approved June 30, 1926) and Rule 19 of the Equity Rules of this Court, it be permitted to file with this Court its amended answer to the bill of complaint herein, copy of which amended answer is hereto annexed, and that the same may take the place of its original answer, which may and shall be considered withdrawn upon the filing of said amended answer.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM—1929.

STATE OF NEW JERSEY, Plaintiff, against THE CITY OF NEW YORK, Defendant.	No. 18, Original.

AMENDED ANSWER OF THE DEFENDANT, THE CITY OF NEW YORK.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now, comes the defendant, The City of New York, by Arthur J. W. Hilly, its Corporate Counsel and its Solicitor herein and, reserving all manner of benefit by objection, exception or otherwise to the many defects, errors, insufficiencies, imperfections and discrepancies in the plaintiff's Bill of Complaint contained, for its amended answer to the said Bill of Complaint the defendant, The City of New York, respectfully shows to the Court and alleges as follows:

FIRST: That it is without knowledge as to all and singular the allegations contained in that item or division of the Bill of Complaint which is designated "I", except as to so much thereof as alleges or purports to allege that the plaintiff is one of the States of the United States of America having its Capitol and seat of Government at the City of Trenton in the State of New Jersey, and except as to the allegations

contained in that paragraph or section thereof which is numbered "2".

AS TO THE ITEM OR DIVISION OF THE BILL OF COMPLAINT WHICH IS DESIGNATED "III", THE DEFENDANT, THE CITY OF NEW YORK, SAYS:

SECOND: That it denies all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 12, 13, 14, 17, 18, 19, 20, 21, 22 and 23.

THIRD: That it is without knowledge as to all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 4, 5, 6, 7, 8, 9, 10, 15 and 16, and therefore denies the same.

FOURTH: That it denies all and singular the allegations contained in the paragraph or section of the Bill of Complaint which is numbered 11 except as to so much thereof as alleges that the defendant, The City of New York has a population of more than 6,000,000 people which is continuously increasing.

FURTHER ANSWERING AND FOR A FIRST DEFENSE, THE DEFENDANT, THE CITY OF NEW YORK, FURTHER ALLEGES:

FIFTH: That the defendant, The City of New York, has for many years last past dumped the garbage and some refuse collected by it in the Atlantic Ocean under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said supervisor under the authority conferred on him by Chapter 496 of the Laws of United States of 1888, June 29, Sec. 1 (25 Statutes 209, as amended, now Title 33, Chapter 9, Sections 441, 443, 449 and 451, United States Code, approved June 30, 1926) at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12½ and 22 miles distant respectively from

the New Jersey shore (being greatly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States; that in view of the dumping of said garbage and refuse on the high seas by said City of New York in the manner and at the points aforesaid, this Court has no authority to enjoin said City, the defendant herein, from said dumping of garbage and refuse so performed.

FURTHER ANSWERING AND FOR A SECOND DEFENSE, THE DEFENDANT, THE CITY OF NEW YORK, FURTHER ALLEGES:

SIXTH: That garbage and refuse in large quantities, including fruit, fruit skins, pieces of meat, vegetables, mattresses, electric light bulbs, pillows, bottles of all sorts, tin cans, boards, barrels, crates and parts thereof, and other pieces of wood, has for many years last past been and is being dumped into the Atlantic Ocean from steamships and other floating equipment, both inside and outside of the entrance to New York Harbor and into the sea lane for vessels clearing for ports south of New York and returning therefrom at distances from 2½ to 8 miles from the shore of New Jersey from Highlands to Barnegat Lighthouse; that cargoes of condemned foodstuffs are and have been for many years past dumped into the sea at a point about 25 miles southeast of Scotland Lightship; that private contractors (i.e. other than those employed in connection with dumping of garbage by The City of New York) have for many years last past dumped under permits issued by the Supervisor of the Harbor of New York under said Title 33, Chapter 9, Sections 441, 443, 449 and 451, United States Code, into the Atlantic Ocean at points from 3 to 8 miles southeast of Scotland Lightship, excavated and refuse material from demolished buildings in the City of New York, which material often contains large quantities of refuse, especially boards, planks, barrels, barrel staves, crates and other pieces of wood, also bottles of all sorts, tin cans, etc.; that such private contractors and the United States

Navy Yard, located in the City of New York, also for many years last past, have been dumping garbage into said ocean, either at points from 8 to 20 miles distant southeast from said Scotland Lightship or nearer thereto under such permits issued by the Supervisor of the Harbor of New York, as aforesaid; that insufficiently treated and foul and unsanitary sewage from the cities of Long Branch and Asbury Park on the coast of New Jersey has been, for a number of years last past, and is being discharged into the Atlantic Ocean a short distance from the beach at each of those cities; that all of said garbage, refuse, sewage and other offensive matter is of the same kind and character as that dumped by The City of New York at points from 8 to 20 miles southeast of Scotland Lightship and from 10 to 22 miles from the New Jersey shore; that such garbage, refuse, sewage and other offensive matter discharged as aforesaid by private contractors, by the United States Navy Yard authorities and by said New Jersey cities into the waters of the Atlantic Ocean in large quantities, would float under the influence of the tide and winds into the waters and onto the beaches of the State of New Jersey and its municipalities claimed to be polluted in this action, and it is impossible to determine whether garbage, refuse and other offensive matter in substantial quantities dumped into the sea as aforesaid by The City of New York is deposited in the waters of the State of New Jersey and on its beaches or in greater quantities than garbage, refuse and offensive matter deposited in the sea by other agencies than The City of New York, as aforesaid, and that if any injury or damage is suffered by the State of New Jersey and/or its citizens or inhabitants or to their health, safety or property, it is not and cannot be chargeable to the acts of the defendant.

FURTHER ANSWERING AND FOR A THIRD DEFENSE, THE DEFENDANT, THE CITY OF NEW YORK, FURTHER ALLEGES:

SEVENTH: That the bill of complaint herein does not state facts sufficient to constitute a cause of action in equity,

nor any matters of equity entitling the plaintiff to the relief prayed for or to any relief nor are the facts stated in the bill of complaint sufficient to entitle the plaintiff to any relief against the defendant.

WHEREFORE, the defendant, The City of New York, prays judgment that the Bill of Complaint herein be dismissed and that it be hence dismissed with its costs and disbursements in this cause sustained and for such other and further relief to this defendant as to the Court may seem meet and proper in the premises.

THE CITY OF NEW YORK,
By ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

FILE COPY

JAN 30 19

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1929.

No. [redacted], Original.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO AMEND ITS ANSWER.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

Minnick Press, 77-79 Beekman Street, New York City

IN THE

Supreme Court of the United States,

OCTOBER TERM—1929.

STATE OF NEW JERSEY, Plaintiff, against THE CITY OF NEW YORK, Defendant.	No. 18, Original.

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO AMEND ITS ANSWER TO CONFORM TO ITS PROOF.

Statement—Nature of Motion.

This is a motion on the part of the defendant, The City of New York, to amend its answer to conform to the proof offered by it and received by the Special Master, who has taken proofs herein preparatory to making findings and a report to this Court. No objection to the proof offered was made by plaintiff's counsel on the ground of surprise or failure to plead special defenses, or to strike out or exclude such proof, nor were exceptions taken on these or any grounds to its admission.

Authority for Making the Motion, Statutory and Under Equity Rule.

Title 28, Chapter 18, Section 777, United States Code Annotated (approved June 30, 1926) provides that:

> Section 777. "*Defects of form; amendments.* No summons, writ, declaration, return, process, judgment,

or other proceedings in civil causes, in any court of the United States, shall be abated, arrested, quashed or reversed for any defect or want of form; but such court * * * may at any time permit either of the parties to amend any defect in the process or pleadings, upon such conditions as it shall, in its discretion and by its rules prescribe."

Equity Rule XIX provides as follows:

"The court may at any time in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleadings or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court at every step of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Statement of Case.

Facts Necessary To Be Considered.

Plaintiff commenced an action herein by leave of Court in May, 1929, to enjoin defendant, its contractors, officers and agents, from dumping any garbage, refuse, or other noxious or offensive matter, into the Atlantic Ocean or other waters of the United States, off the coast of New Jersey, or in otherwise defiling or polluting said waters on the beaches of said state. (Motion, p. 2, par. 1.)

In response to the subpoena of this Court, defendant obtained leave to answer and did in June, 1929 file its answer in form, it will be assumed, of a general denial. (Motion, p. 3, pars. 3, 4 and 5.)

Plaintiff replied joining issue in October, 1929, and a Special Master was appointed October 14, 1929, to take testimony, make findings of fact and conclusions of law, and to submit same to this Court with recommendations for a decree. (Motion, p. 3, par. 6.)

In December, hearings before the Special Master commenced and plaintiff offered much testimony. Defendant offered testimony supporting its denials and without objection from *plaintiff's counsel* (by typographical error in motion called defendant's counsel) and offered evidence to the effect (1) that it had been accustomed for many years to dump and had dumped its garbage into the high seas at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12½ and 22 miles from the New Jersey coast, under permit from the United States Supervisor of the Harbor of New York, in accordance with the provisions of Sections 441, 443, 449 and 459 (Title 33, Chapter 9, United States Code Annotated, approved June 30, 1926) and (2) that garbage and refuse had for many years been dumped in large quantities into the ocean from steamships and from scows and vessels owned by private contractors and by the United States Navy Yard authorities at points from 3 to 25 miles from the Jersey coast, and that unsanitary sewage had for a number of years been discharged into the ocean a short distance from said shore from the inadequate sewers of the New Jersey coast cities of Long Branch and Asbury Park. (Motion, p. 4, par. 7.)

No objection of any kind was offered on the part of plaintiff's counsel to this evidence, on the ground of surprise, or that the matters offered to be proved had not been pleaded by way of defense and no motions or exceptions have been made by plaintiff's counsel in relation thereto. (Motion, p. 5, par 8.)

The last hearing before the Special Master was held December 5, 1930. (Motion, p. 4, par. 7.)

Submission of proposed findings of fact and conclusions of law and argument thereon has been set for February 4, 1931, before the Special Master, but this motion is not made for the purpose of delay, but in order to safeguard defendant's proved interests and to conform its answer to the proof. (Motion, p. 5, pars. 9 and 10.)

No further testimony is desired to be taken by defendant, and all proceedings may stand as they now exist, the answer to be permitted to be amended be regarded as if it were the original answer of defendant and filed at the time the original answer was filed. (Motion, p. 5, par. 10.)

That the motion should be granted is asserted in the following:

ARGUMENT.

POINT I.

The amendment of the answer herein so as to set forth the defenses delineated in the moving papers and proposed answer should be allowed in the interest of justice and to protect the substantial rights of the defendant.

The defendant's original answer might be interpreted to amount to little more than a general denial. Equity Rule 30 of this Court, while providing that specific denials are permissible, states that general denials should be avoided. It was evidently the intention of the pleader who drew the City's Answer herein to specifically deny each and every allegation in each of the paragraphs mentioned in the Answer as so denied. It then became a question whether the pleading specifically denied the facts upon which the plaintiff relied in that regard. General denials are provided for under Section 261 of the New York Civil Practice Act which states that the answer must contain:

> "1. A general or specific denial of each material allegation of the complaint controverted by the defendant * * *."

The pleader might, therefore, be excused in thinking that he had pleaded sufficiently in this case to raise an issue.

Assuming, however, that only a general denial was interposed by the City, recent court decisions seem to condemn that form of answer.

> *Grischy* v. *Galvin,* 278 Fed. 301;
> *Bay Shore Inv. Co.* v. *Palmer,* 284 Fed. 979;
> *Swan* v. *Public Utilities Commission of Kansas,* 298 Fed. 114.

What might have been decided, however, in regard to the form of the pleading had the plaintiff raised the question by motion, exception or objection to testimony, is immaterial now, for it in fact replied, joined issue and went through the hearings before the Special Master without doing any of these things. Consequently, it must be taken to have waived any insufficiency of the answer in respect to the character of the denials interposed by defendant.

> *Slater* v. *Maxwell,* 6 Wall. (73 U. S.) 268, 275;
> *Besson & Co.* v. *Goodman,* 147 Fed. 887;
> *Sprague* v. *Providence Savings & Trust Co.,* 163 Fed. 449;
> *Ted Browning Music Co.* v. *Fowler,* 290 Fed. 751;
> *Volpe* v. *Sensatini,* 249 Mass. 132.

In the last mentioned case the answer was a general denial. The Massachusetts Equify Rule is, if anything, stricter in this regard than the rule of this Court. The parties went to trial before the Master, and the Supreme Court of Massachusetts said (p. 134):

> "The plaintiff could not take advantage of defects in the answer after proceeding to trial on the merits before the Master. By failing earlier to object to the sufficiency of the answer, errors in its form and substance must be taken to have been waived."

In regard to the matter of setting up the two additional separate defenses in the proposed new answer not pleaded

originally, failure on the part of the plaintiff to object to the matters proved should also lead to a decision of this motion favorable to the defendant. By these defenses, defendant seeks (1) to set forth in its answer (as it did on the hearings) that the dumping of its garbage took place on the high seas more than one marine league from either the New Jersey shore or even the extreme limit of its territorial waters and that such dumping was carried out under the supervision of and in accordance with the permits issued by the United States Supervisor of the Harbor of New York under an appropriate statute; and (2) that dumping of garbage and refuse in large quantities is done, either near than the New Jersey shore or at the same distances therefrom at which the City dumps through private contractors, by private steamships and by the United States Navy Yard authorities and that the beaches of two of the largest New Jersey shore communities are fouled by their own sewage. Evidence to prove these contentions of defendant was offered by it and not objected to by the plaintiff as not being within the pleadings, etc., and no motions were made by its counsel to strike out or exclude such evidence. Such are the allegations of the motion papers herein and we hardly think they will be denied by the plaintiff's solicitor and counsel. We hardly think, also, that he will claim he asserted surprise when the evidence was offered. The proposed defenses raise no new issues from those litigated at the hearings.

The failure to plead these matters seems to have been due to the difficulty encountered by the original pleader for the City to ascertain the true situation from the New York Department of Street Cleaning which in June, 1929, and for many years prior thereto, had been in charge of the disposal of the greater portion of the New York City garbage and refuse. Assuming that such a situation was open to criticism, the well-known lenient attitude of the Courts as a matter of public policy toward the transaction of official business by public officers requires that the delay in moving to amend should be disregarded.

Seaver v. *the Mayor, etc.*, 7 Hun (New York) 331;
In re Lorillard, 13 N. Y. Supp. 83, 86;
Stemmler v. *the Mayor, etc.*, 45 App. Div. (New York) 573;
Utah Power and Light Co. v. *United States*, 243 U. S. 389.

In the *Seaver* case, *supra*, it is said (p. 332):

> "Public interests, unfortunately, are not as assiduously guarded or as thoroughly protected as those affecting individuals, and the most stringent rules of practice cannot for that reason be applied to the litigation involving them; more leniency is required concerning them, for the purpose of avoiding an improper enhancement of burthens by the allowance of demands having no just foundation."

In the *Stemmler* case, *supra*, prior authorities are discussed and followed, including *United States* v. *Fitzpatrick*, 9 Wheaton 720, 735.

In the *Utah Power and Light Co.* case, *supra*, this Court, speaking through Mr. Justice Van Devanter, at page 409, said:

> "As a general rule laches or neglect of duty on the part of officers of the government is no defense to a suit by it to enforce a public right or protect a public interest" (citing long list of authorities).

The same rule, we submit, should be applied here.

The City of New York does not desire to offer any additional evidence in support of such newly pleaded defenses. We hardly see how the plaintiff can claim the right or even exhibit the inclination to do so as no new issue is raised. We, therefore, contend that under the following authorities this Court should, in the exercise of its sound discretion and in the furtherance of substantial justice, permit the amendment without costs, all proceedings to stand as if the answer now sought to be substituted for the original answer had been originally filed.

Title 28, Chapter 18, Section 777, United States Code Annotated, (approved June 30, 1926);
Equity Rule XIX;
Lusk v. *Bush,* 199 Fed. 369, 376;
Davis v. *Gates,* 239 Fed. 192, 196;
Charles E. Hires Co. v. *Porto Rico Int. Corporation,* 285 Fed. 645;
Payne v. *Jacksonville Forwarding Co.,* 290 Fed. 936.

In the last mentioned case (in admiralty) the Circuit Court of Appeals said (p. 938):

> "The amendment simply presented a defense claimed to exist under the testimony taken. Such a defense was plainly germane to the controversy. No surprise was claimed by the libellant, nor offer by him of further testimony refused. No request for time to produce further testimony was made and denied. We therefore think the ruling of the Court permitting such amendment was proper."

The moving defendant here is a great municipality with problems much more vast and difficult than that of many states.

> "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them."

Hunter v. *Pittsburgh,* 207 U. S. 161, 178.

This suit should, therefore, be regarded in the same light and governed by the same rules as if the action were one between two sovereign states. It has been a rule of long standing that in suits between states great liberality in allowing amendments to pleadings should be extended to the parties. As long ago as 1840 this Court, through Chief Justice Taney, announced this rule:

> "In ordinary cases between individuals, the Court of Chancery has always exercised an equitable discretion in

relation to its rules of pleading, whenever it has been found necessary to do so for the purposes of justice. And in a case like the present, the most liberal principles of practice and pleading ought unquestionably to be adopted, in order to enable both parties to present their respective claims in their full strength."

The State of Rhode Island v. *The State of Massachusetts*, 14 Peters 210, 257.

See also

Virginia v. *West Virginia*, 234 U. S. 117,

where this Court permitted the State of West Virginia to file a supplemental answer which involved the opening of the case and the taking of additional testimony although it was expressly stated that it would not have done so had the case been between individuals.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Attorney and Solicitor for the defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

FILE COPY

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CHARLES ELMORE CR
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BEACH POLLUTION CASE.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 1 [redacted]ginal. 10

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE TO FILE ANSWER AND TO WITHDRAW ANSWER PREVIOUSLY FILED.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

February 2, 1931.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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IN THE

Supreme Court of the United States

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

NOTICE.

TO:

Hon. Arthur J. W. Hilly, Corporation Counsel,
Solicitor for Defendant.

DEAR SIR:

PLEASE TAKE NOTICE that on Monday, February 2, 1931, plaintiff will ask leave to file the annexed answer to defendant's motion for leave to file amended answer and to withdraw its answer previously filed, in the above-entitled matter.

January 29, 1931.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

Plaintiff's Answer to Defendant's Motion for Leave to File Amended Answer and to Withdraw Answer Previously Filed.

Plaintiff answers defendant's motion for leave to file amended answer and to withdraw answer previously filed, and says:

1. It admits paragraphs 1, 2, 3, 4 and 6.

2. It denies paragraph 5, and says that the evidence taken before the Special Master shows that all of the facts pertaining to the subject-matter of this suit have been the subject of conferences and discussions during the past ten years between the Governor, officers of plaintiff's municipalities, the Secretary of War and his agent, the Supervisor of the Harbor of New York, on the one hand, and the Mayor, Corporation Counsel, Health Commissioner, and Commissioner of Street Cleaning and other officers of defendant, on the other hand, and that all of the facts relating to the subject were in the possession of the defendant; that it asked for and obtained from this court an extention of sixty days for filing its answer to the complaint; and that defendant was required by the rules

of equity practice to answer fully, in the first instance, all the allegations of the complaint and to ascertain, and set forth in his answer all of the facts within its own possession necessary to its defense.

3. It denies paragraph 7, except that it admits that hearings began on December 11, 1929, and says that said hearings continued at intervals during fourteen days and were closed on April 8, 1930 (minutes of meeting November 25, 1930, pp. 3, 7, 25; S. M., 2052, 2074, 2058, 2060). On November 25, 1930 counsel for the parties had a meeting with the Special Master to fix the time and place of oral argument and the submission of briefs. Up to that time defendant had failed to furnish certain information requested by the Special Master at the hearing on April 8, 1930, and desired further time in which to furnish that information although all of it had been in its possession since the end of December, 1929. Defendant also desired to file certain supplemental exhibits. For that sole reason the meeting was adjourned to December 5, 1930. It further says that the only proof added to the record since the hearings closed on April 8, 1930, were said exhibits offered by defendant on December 5, 1930, as follows:

Exhibit 9, consisting of three resolutions of the State Department of Health of New Jersey, adopted September 14, 1926; Exhibit 10, a report made in 1928 and which was in possession of defendant at the hearing on April 8, 1930 and available if it desired to offer it in evidence at that time. (S. M., 2039-40; S. M., meeting November 25, 1930, p. 36); Exhibit 11, a bill of complaint filed in the New Jersey Court of Chancery, November 10, 1930, involving a cause of action which arose subsequent to the close of the hearings in this case; Exhibit 12, which contained information of quantities of garbage dumped at sea by defendant during a 5-year period ending Decem-

ber 31, 1929 requested of it by the Special Master at the hearing on April 8, 1930; Exhibit 13, a letter dated June 12, 1930; Exhibit 14, a map, frequently referred to during the hearings, obtained from the office of the New Jersey State Department of Health on April 5, 1930, where it had been on file for a number of years.

Except for Exhibits 11 and 13, all of these documents were available for production in evidence at any of the hearings held by the Special Master. Exhibit 13 has been available to defendant since June 12, 1930, and Exhibit 11 has been available to it as a matter of public record since November 10th, last. At the meeting on November 25, 1930, the Special Master several times remarked that all of these matters could have been brought to the attention of the Special Master sooner (pp. 10, 21, 22, 25, 32, 33, 40, 41, S. M., meeting November 25, 1930). It admits the purpose of the suit as generally stated in paragraph 7. It denies that the evidence offered proves any of the other allegations therein contained. It denies that the granting of this motion will not delay these proceedings and says that the granting of this motion will serve only as an excuse of delay, which is an attitude of the defendant frequently criticized by the Special Master during the hearings and at the meeting on November 25, where the Special Master observed: "It seems to me that there has been an attitude of indefinite postponement in this case" (Minutes of meeting November 25, 1930, p. 5). On January 15, 1931, defendant applied to the Special Master for a postponement of the argument. This application was denied unless plaintiff consented thereto. This motion is an expedient adopted by defendant to prevent the argument of the case on the date fixed by the Special Master and the disposition thereof within a reasonable time thereafter.

4. The public nuisance complained of is the casting upon the waters and upon the beaches of plaintiff, daily, of thousands of tons of garbage and refuse from the City of New York, consisting of vegetable and animal matter in a decayed and putrid condition which interferes with the use of those waters and beaches by thousands of inhabitants and visitors, in twenty-nine seashore municipalities of plaintiff, particularly in the summertime. Said garbage and refuse contains the germs of disease and epidemic and the record shows that it has caused infections, disease and physical injuries. It is important to avoid as much as possible delay in the final determination of this case because the continuance of this public nuisance during the summer season imposes upon plaintiff's municipalities many thousands of dollars of expenses to clean the beaches and it seriously depreciates the value and usefulness of property, aggregating more than one hundred and thirty-nine million dollars in value, which is devoted to enterprises directly relating to the recreational uses of the beach and shore of the Atlantic Ocean for a distance of more than fifty miles along the border of the plaintiff state from Sandy Hook to Beach Haven. The continuance of this nuisance during another summer will involve the loss and expense of many thousands of dollars which plaintiff desires to avoid.

5. It denies paragraph 8.

6. It denies paragraph 9, except that it admits that the case has been set down for argument and for the submission of briefs and findings of fact and conclusions of law before the Special Master on February 4, 1931. It further says that neither at the meeting of November 25 nor at that of December 5, 1930, nor at any other time has defendant indicated any intention or desire to file an amended answer.

7. It denies paragraph 10 and 11.

Respecting the proposed amended answer plaintiff says:

8. The first, second, third and fourth paragraphs thereof are the same as the original answer filed.

9. The proof in the record does not support the allegations of the first eleven lines of the 5th paragraph, and it says that the facts alleged therein, if true, do not constitute legal defense in an action to restrain a public nuisance, since Congress has no power to authorize a public nuisance and the acts of Congress mentioned therein confer no plenary power upon any officer of the government to authorize defendant to dump its garbage at sea. There is no proof in the record that the garbage of defendant is dumped in excess of one marine league from shore; there is no proof that the garbage is not dumped within the navigable waters of the State of New Jersey and of the United States; there is no proof that said garbage and refuse is dumped on the high seas. These contentions are inconsistent with defendant's claim in the same paragraph of right to dump as and where it does by virtue of the permits of the Supervisor of the Harbor of New York, an officer of the War Department. It denies that this court has no authority to enjoin defendant from dumping said garbage and refuse at the location where the record shows that the same is dumped. It further says that the dumping grounds used by the defendant are upon waters and soil over which plaintiff has exclusive territory and jurisdiction; that said garbage is dumped in violation of the statutes of plaintiff.

10. It denies paragraph 6th of the proposed answer and says that the evidence in the record does not support any of the allegations contained therein. Plaintiff further says that said allegations, if true, do not constitute a legal defense to the plaintiff's cause of action, since the

commission of a public nuisance by others would not excuse the defendant.

11. Neither the motion nor the proposed bill of complaint allege any facts not known or capable of being known to the defendant at the time it filed its original answer. No reason is disclosed why said proposed answer could not have been filed in the beginning or at any time since the hearings closed on April 8, 1930.

12. On January 28, 1931, plaintiff was served with defendant's motion and brief in support thereof, said motion to be made before the court on February 2, 1931. Said notice affords insufficient and inadequate time for the proper consideration of the matters contained in said documents, and to prepare and submit an adequate reply thereto.

13. The proposed amended answer does not conform to the proof offered by defendant before the Special Master and the record submitted by defendant before said Special Master does not support any of the allegations contained in the fifth and sixth paragraphs of the proposed answer.

14. The granting of defendant's motion will injure the substantial rights of plaintiff in violation of Equity Rule XIX, in that it will delay for a protracted period the abatement of a public nuisance committed by the defendant, a citizen of the State of New York, in the waters and upon the land of the plaintiff, held by it in its sovereign capacity, which constitutes a menace to the health and welfare of plaintiff's inhabitants and a direct injury to property and rights of the plaintiff and of its municipalities and inhabitants.

15. At the time said motion and brief were served upon plaintiff, plaintiff's brief for argument before the Special

Master had been completed, and printed at great expense to plaintiff, and plaintiff then was and now is ready to submit its brief and oral argument before the Special Master on February 4, 1931.

WHEREFORE plaintiff prays that defendant's motion be denied.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

FILE COPY

[Req. No. 21985]

FILED
FEB 2 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1929

No. [redacted], ORIGINAL

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

PROPOSED REPLY TO PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION FOR LEAVE TO FILE AMENDED ANSWER, ETC.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

E. W. TRAVER, Law Printer, 154 Nassau St., N. Y. (Tel. BEekman 3-2726)

[Req. No. 21985]

IN THE

Supreme Court of the United States

October Term, 1929

State of New Jersey, *Plaintiff,* against The City of New York, *Defendant.*	No. 18 Original

NOTICE

To:

Hon. William A. Stevens,
Attorney General of the State of New Jersey;

Hon. Duane E. Minard,
Assistant Attorney General of the State of New Jersey, Solicitors for the Plaintiff.

Sirs:

Please be advised that on Monday, February 2nd, 1931, the defendant, The City of New York, will apply to the above named Court for leave to file its proposed reply to the plaintiff's answer to

defendant's motion for leave to file an amended answer, etc., a copy of which proposed reply is annexed hereto.

Dated, January 31, 1931.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant
The City of New York.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

No. 18
Original

IN EQUITY

Defendant's Proposed Reply to Plaintiff's Answer to Defendant's Motion for Leave to File Amended Answer, Etc.

Defendant requests leave to reply to plaintiff's answer to defendant's motion to amend its original answer, etc., and says:

I. Replying to paragraph 3 of the answer defendant says that the adjournment taken at the end of the hearing on April 8th, 1930, was as stated by the Special Master at the desire of the defendant "with the view possibly of introducing further testimony," whereupon adjournment was taken to April 14th, 1930 (S. M. 2048). There is no record of anything transpiring on April 14th and the next record of proceedings appearing in

the minutes of the meeting of November 25th, 1930. From these minutes it appears that counsel for defendant had attempted to examine certain minutes or documents of the New Jersey State Board of Health at Trenton, N. J., in order to find out what action had been taken in respect to beach and water pollution at Long Branch and Asbury Park by defective sewers of those cities, but had been refused access to the minutes apparently for the reason that he could not specify the exact thing he wanted. It was not until the hearing before the Special Master on November 25th, 1930, that it was possible to obtain from defendant a consent to produce what was wanted and which was introduced in evidence at the hearing of December 5th (S. M. Hearing or Conference of November 25th not given page numbers).

II. Replying to the statement in paragraph 3 of the answer defendant says that the writer of this reply saw the Special Master on January 15th and told him that he did not expect to be ready on February 4th and asked him what his attitude in regard to a short postponement would be whereupon the Special Master told him to get in touch with the plaintiff's counsel to see if he would consent thereto. Defendant emphatically denies that any application for an adjournment was then made or denied by the Special Master. It would have been highly improper to make such an application in the absence of plaintiff's attorney but there was nothing improper in ascertaining the Special Master's attitude in case plaintiff's consent could be obtained. The Special

Master in the course of the conversation stated that no amended answer had been received from the City. Up to that time the writer had given no particular thought to amending the answer as he had not been employed until the hearings were closed. Thereafter he considered the matter carefully in the light of the authorities and determined to make the application to amend which was brought on at the earliest possible moment. Defendant therefore denies that this motion to amend the answer is an expedient adopted by defendant to prevent argument before the Special Master. The reason for much of the delay in this case was because of engagements of plaintiff's trial counsel in other matters.

III. Time does not permit of a specific or complete reply to all of plaintiff's statements in its answer, but in paragraph "13" plaintiff states that the proposed amended answer does not conform to the proof. The only way to determine that fact is to submit before the next session of this Court the proof, *i.e.* stenographer's minutes of the testimony of certain witnesses to the Court and defendant begs leave that an opportunity be granted it to print and submit to this Court such testimony consisting of less than 400 pages of typewritten stenographer's minutes.

ARTHUR J. W. HILLY,
Corporation Counsel
of the City of New York,
Solicitor for Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

FILE COPY

MAY 25 1929
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

October Term, 1928

No. [redacted], Original.

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

MOTION FOR LEAVE TO ANSWER AND ENLARGEMENT OF TIME TO ANSWER.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

NEW YORK:
M. B. BROWN PRINTING & BINDING CO.,
37-41 Chambers Street.

1929

(44484)

In the
Supreme Court of the United States

OCTOBER TERM—1928.

No. 21, Original.

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

Notice,

To:

Hon. WILLIAM A. STEVENS,
Attorney General of the State of New Jersey,

Hon. DUANE E. MINARD,
Assistant Attorney General of the State of New Jersey,

Solicitors for Plaintiff.

Sirs:

Please be advised that on Monday, May 27, 1929, the annexed motion will be presented to the Court and application made for the relief therein prayed.

Dated, New York, May 25, 1929.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM—1928.

No. 21, Original.

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

In Equity.

MOTION FOR LEAVE TO ANSWER AND FOR ENLARGEMENT OF TIME TO ANSWER.

Comes now the defendant, The City of New York, by its Corporation Counsel and Solicitor and shows as follows, to wit:

1. That pursuant to leave of this Court granted on the 20th day of May, 1929, the State of New Jersey has filed in this Court a bill of complaint against the defendant The City of New York, praying that this Court grant to the plaintiff the United States' writ of injunction perpetually restraining he defendant from dumping garbage and other matter into the Ocean or other waters of the United States off the coast of New Jersey and for other relief.

2. That the suit in equity of the State of New Jersey so permitted, by this Court, to be commenced was docketed as number 21, Original, October Term—1928, on the 22nd day of May, 1929.

3. That this Court's subpoena to answer the aforesaid bill of complaint was issued therefrom

under date of May 21st, 1929, and was received by the defendant on May 23rd, 1929. In and by said subpoena the defendant was directed to appear and answer before this Court on May 27th, 1929; and not within twenty days after the issuance and service thereof as provided in Rule XII of the Rules of Practice for the Courts of Equity of the United States.

4. That, within the brief time since the defendant first received a copy of the bill of complaint herein, which was on or about May 9th, 1929, less than 20 days before it is required to answer thereto, the defendant has been and is unable to prepare its answer herein, which inability is partially due to the necessary preoccupation of its Corporation Counsel and his Assistants in the preparation of an answer on its behalf in the suit now pending in this Court, and brought by the same plaintiff against the State of New York and this municipality as defendants.

5. That the plaintiff, as the defendant is advised, consents to an enlargement of the time of the defendant within which to answer herein.

The defendant prays, therefore, that it be permitted to answer herein, that its answer, when prepared, be received and filed, and that its time within which to present and offer for filing its answer to the bill of complaint herein be enlarged and extended for sixty days from May 27th, 1929.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

J. JOSEPH LILLY,
of Counsel.

FILE COPY

MAR 20 1931

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

[redacted] 13 [redacted] 10

No. 18, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 18, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER.

To the Supreme Court of the United States:

In the above entitled cause this Honorable Court appointed me as Special Master by its order dated October 14, 1929, as follows:

"And it is further ordered that the Honorable Edward K. Campbell be and he is hereby appointed Special Master in this cause with power to summon witnesses, issue subpoenas and to take such testimony as may be introduced and such as he may desire to call. The master is directed to make findings of fact and conclusions of law and to submit the same to this Court with all convenient speed, together with his recommendations for a decree. The findings, conclusions and recommendations of the master shall be subject to consideration, revision or approval by the Court."

The parties to the suit, by their respective counsel, appeared before me in Washington, in compliance with my request, in November, 1929, when a time was fixed for the taking of proof. Public hearings began at Asbury Park, New Jersey, on December 11, 1929, continuing for three

days. Another public hearing was held at Asbury Park on January 15, 16, and 17, 1930; and another at the same place on January 22, 23 and 24, 1930. At these hearings more than one hundred and fifty witnesses for the plaintiff were examined.

Public hearings were resumed in the City of New York on March 24, 1930, and continued through March 27, 1930. On April 8, 1930, a public hearing was had at Newark, New Jersey, when witnesses were examined.

Another public hearing was held at Washington, D. C., on December 5, 1930, and some additional proof was admitted without objection. At that time at the request of counsel and to afford time for preparation for argument and briefs the Special Master set February 4, 1931, as the date upon which arguments would be heard, and on the last named date counsel were heard in oral argument. The motion to amend the answer was then pending.

Except to call upon the defendant to file a statement from its records showing the quantities of garbage and refuse dumped at sea for each of the years 1925 to 1929, both inclusive, I did not deem it necessary to call other witnesses.

Now pursuant to the above-mentioned order I have reported the testimony and the exhibits received by me as Special Master, by filing the same in the office of the Clerk of this Court with my certificate, and I herewith submit to the Court my findings of fact, conclusions of law and recommendations.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 18, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER

PLEADINGS.

The Bill.

The State of New Jersey exhibited its original bill in the Supreme Court of the United States against the City of New York, a municipal corporation under the laws of the State of New York, by which the State seeks an injunction restraining the City, its contractors and agents from dumping garbage or refuse into the waters of the Atlantic ocean off the coast of New Jersey and from defiling the waters and polluting the beaches of said State.

(1) The Court's jurisdiction is alleged to depend upon the ground that the suit is one in which a state is a party within the provisions of Article III, Section 2 of the Constitution of the United States.

(2) The Bill describing the location of the State as bordering on the Atlantic Ocean for more than one hundred miles alleges that the portion of ocean frontage more directly affected by the matters complained of extends from Atlantic Highlands to Beach Haven, a distance of approximately fifty miles, occupied by a continuous succession of municipalities which because of their beaches are adapted to, and their inhabitants are engaged in and rely for their livelihood chiefly upon, the business of maintaining sum-

mer resorts to which great numbers of people come in the pursuit of rest, recreation and pleasure..

(3) It is alleged that the plaintiff possesses the sovereign ownership of the lands along the shore and under the waters of the ocean below highwater mark throughout its beach front within its territorial limits and that the use of the said beaches and the adjacent waters are common to the people of the State.

(4) That said seashore is famous as a summer resort and has been greatly improved by piers, wharves, pavilions, bathing beaches and other conveniences for the health and recreation for citizens of the State and other people resorting to these places and that along the seashore and for some miles landward the territory is improved by hotels, pleasure resorts, country clubs, residences and large estates which are provided and maintained at great expense for the benefit of summer visitors and residents. That the waters of the ocean adjacent to the said shore and beaches are largely used for surf-bathing and for pleasure boating, for fishing and other purposes, and that many millions of dollars have been invested within the beach section in hotels, bathing pavilions, piers for landing and for pleasure, boardwalks, boulevards and facilities for pleasure and profit, and that several thousands of people are constantly employed to maintain and operate the same.

(5) That the section in question lies between the two great metropolitan areas of New York and Philadelphia and within easy access and commuting distance by rail or motor vehicle of people within these areas; that many persons commute daily between the seashore and their places of business, and the seashore is visited by many thousands of visitors and excursionists during summer months and over holidays and week ends.

(6) That the growth, prosperity and substantial property values of the seashore communities in question are the result of enterprises dependent upon the population and the suitability of said waters, beaches and shore front fa-

cilities for fishing, boating, bathing and other seashore recreations and pursuits, and that the continuance of these agencies depends primarily upon the ability of the State or its citizens and municipalities to keep the waters wholesome and the beaches and sea front property free from pollution, contamination, and unsightly and unhealthful conditions.

(7) That along the beach section in question are located many fish pounds, constructed under licenses granted by the State or one of its departments and maintained by its citizens who have made investments in the fishing business of large sums of money; that the production of these fish pounds in one year amounts to approximately 20,000,000 pounds of fish, having a value of nearly a million dollars, and that the industry gives employment to approximately 500 men.

(8) It is alleged that the defendant, with a population exceeding 6,000,000 of people and increasing annually, disposes of garbage and other refuse by transporting the same in barges towed out and dumped into the navigable waters of the United States off the complainant's coast and that many barge loads are so disposed of daily and may constantly increase. The Bill specifies a number of articles and things composing the garbage and refuse, much of which, it is averred, is in a putrid and decayed condition. It is alleged that a considerable proportion of said garbage and refuse floats upon and beneath the surface of the sea in masses or islands which obstruct and impede fishing boats and other craft until it is driven by the wind and tide upon the said beaches and cast thereon by waves in heaps and windrows and under or about the piers, wharves, adjacent boulevards and private property, where it decays and pollutes the sea and land unless and until removed and disposed of by the municipality or citizens. That this removal or disposition from the beaches and places affected requires large expenditures by the municipality and other large sums by citizens of the State.

That said garbage or refuse in the water and cast upon the beaches and property of complainant and its citizens, is poisonous and otherwise injurious to human beings and to the fish and other forms of marine life; that it impedes the open navigation of the Waters of the United States clogs, tears and injures the net of the fish pounds, and renders the waters noxious, offensive and unfit for fishing, boating or bathing, and that the dumping of garbage and refuse by the defendant creates a public nuisance which seriously impairs the usefulness, wholesomeness and safety of said waters, beaches and short-front facilities and of the property of the plaintiff, of the municipalities and its citizens, and thereby greatly damages the property, seriously menaces the health and safety of the plaintiff and its citizens; that said acts are and will be repeated and continued from day to day, and that the plaintiff is without adequate remedy at law.

(9) It is further averred that the acts complained of—

(a) Take the property of complainant and its citizens without due process of law in violation of Article XIV, Section 1 of the Constitution;

(b) Regulate and destroy the commerce of the plaintiff and its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution;

(c) Deprive plaintiff and its citizens of the natural advantages of their property along the seashore contrary to its sovereign rights as a member of the Union, and,

(d) It violates Title 33, Chapter IX, Section 407 of the United States Code and other laws of the United States and that said acts are otherwise detrimental to the interests of the plaintiff and its citizens.

ANSWER.

The answer of the City of New York, except in its admission of the averments as to its own population, was substantially a general denial of the allegations of the Bill.

Issue was joined upon this answer.

After the testimony was concluded and the day had been fixed for argument before the Master, the defendant on, to wit, February 2, 1931, filed its motion in this Court for leave to file its amended answer. This motion was allowed by the Court on February 24, 1931, by an order reading as follows:

"The motion of the defendant for leave to file an amended answer and to withdraw the answer heretofore filed in this cause is granted; provided that the plaintiff's reply to the original answer may, if desired, be deemed the reply to the amended answer and that all proceedings heretofore taken herein shall stand and shall be regarded as having been taken as if the amended answer had been originally filed and without reopening the evidence."

AMENDED ANSWER.

The answer denies many of the averments of the bill, and not admitting others sets forth "for a first defense":

(1) That the defendant has for many years last past dumped the garbage and some refuse collected by it in the Atlantic Ocean, under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said Supervisor under the authority conferred on him by the Act of June 29, 1888 (25 Stat. 209), as amended, and now Title 33, Secs. 441, 443, 449 and 451 of the U. S. Code) "at points eight, twelve, and twenty miles southeast of Scotland Light Ship and about ten, twelve and a half and twenty-two miles distant respectively from New Jersey shore (being greatly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States; that in view of the dumping of said garbage and said refuse on the high seas by the said City of New York in the manner and at the points aforesaid this Court has no authority to enjoin the said city, the defendant herein, from said dumping of garbage or refuse so performed."

(2) And further answering and "for a second defense" the defendant alleges: "6. That garbage and refuse in large quantities," including various materials set forth in the answer, "has for many years last past been and are being dumped into the Atlantic ocean from steamships and other floating equipment, both inside and outside of the entrance to New York harbor and into the sea lanes for vessels clearing for ports south of New York and returning therefrom at distances from two-and a half to eight miles from the shore of New Jersey, from Highlands to Barnegat Lighthouse", and that great quantities of condemned food stuffs are and have been for many years dumped at sea at a point about twenty-five miles southeast of Scotland Lightship, and that private contractors have, for many years last past, dumped, under permits issued by the Supervisor of the Harbor of New York under said statute, into the Atlantic ocean at points from three to eight miles southeast of Scotland Lightship, "excavated and refuse materials from demolished buildings in the City of New York, which materials often contain large quantities of refuse, and other things mentioned; and that such private contractors and the United States Navy Yard have for many years been dumping garbage into said ocean either at points from eight to twenty miles distant from said Scotland Lightship or nearer thereto under such permits issued by the Supervisor of the Harbor of New York; and further that insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park for a number of years last past has been and is being discharged into the Atlantic ocean at short distances from the beaches of each of those cities; and that all of the garbage, refuse and sewage and offensive matter is the same kind and character as that dumped by the City of New York at points eight to twenty miles southeast of Scotland Lightship and from ten to twenty-two miles from New Jersey shores. That "such garbage, refuse, sewage and other offensive matter discharged as aforesaid by private contractors, by

the United States Navy Yard authorities and by said New Jersey cities into the water of the Atlantic ocean in large quantities would float under the influence of the tide and wind into the water and on to the beaches of the State of New Jersey and its municipalities claimed to be polluted in this action" and "it is impossible to determine whether garbage or offensive materials in substantial quantity dumped by the City of New York is deposited in the waters of New Jersey and on its beaches or in greater quantities than that deposited in the sea by other agencies than the City of New York; and that if any injuries or damages are suffered by New Jersey or its citizens or to their health, safety or property it is not chargeable to the acts of the defendant; and

(3) "For a third defense the defendant alleges that the bill of complaint does not state facts sufficient to constitute a cause of action or to entitle the plaintiff to any relief."

PARTIES AND JURISDICTION.

This is an original action brought by the State of New Jersey under authority of a resolution of its Legislature, approved April 16, 1929, by direction of the Governor of the State.

The defendant is the City of New York, a domestic municipal corporation, created by and existing under the laws of the State of New York.

The case presents a justiciable controversy over which this Court has jurisdiction. (Art. III, Sec. 2, Const. of the U. S.) (*Georgia* v. *Tennessee Copper Company*, 206 U. S. 230; *Missouri* v. *Illinois*, 180 U. S. 208; 200 U. S. 496. *New York* v. *New Jersey*, 256 U. S. 296; *Wisconsin* v. *Illinois*, 278 U. S. 367, 418).

FINDINGS OF FACT.

The facts deemed to be established by the evidence and which may be considered material to the contentions of the

parties relative to the locality and area affected, summer resorts and beaches, fishing and boating; garbage conditions and effects thereof on the beaches, and their removal, effect on surf bathing and the frequency of garbage deposits and cause thereof; also some history of the dumping by defendant of garbage and refuse, at sea, and reports by the Supervisor of the Harbor of New York, the quantities of garbage or refuse dumped, their movements, also relative to complaints of conditions caused by the deposits, and to matters alleged by defendant in defense; and some other matters hereafter noted, are as follows:

GENERAL STATEMENT.

(1) Locality.

The State of New Jersey on its easterly side borders on the Atlantic Ocean for a distance of about one hundred miles. A reduced copy of a map in evidence, showing the geographical location, is made an exhibit to the bill.

(2) Area Affected.

(a) The part of the State affected more directly by the matters complained of is that portion of the ocean frontage extending from a point at or near Atlantic Highlands southward to Beach Haven, a distance of approximately fifty miles and inward from the shore at various distances. Within this fifty miles of ocean frontage there are twenty-nine separate municipalities of the State.

(b) The State of New Jersey, as the proprietary owner of the seashore, has at different times conveyed to these several municipalities, and in some instances by lease or otherwise, to individuals designated, portions of the frontage under water. No material changes have occurred since 1928 and in that year the ownership of the frontage under water along the said fifty miles of coast line was as follows:

The State owns approximately 285,000 lineal feet be-

tween Sea Bright and Beach Haven; the municipalities, approximately 13,000 lineal feet, and private parties approximately 64,000 lineal feet.

The aggregate resident population of these municipalities exceeds 160,000. Their summer visitors exceed this number many times over. For instance, Allenhurst, a residential place, has a winter population of 1,000, and a summer population of 3,000. Bayhead has a winter population of 300 and a summer population of some 6,000 or 8,000; Bradley Beach (winter), 5,000, (summer), 30,000 to 40,000; Ocean Grove (winter), 4,000, (summer), 35,000 to 40,000. The figures given are approximated. Other municipalities show about the same general ratio between their winter and summer populations.

The assessed value of property within said 29 municipalities for state tax purposes for the year 1929, including hotels, boarding houses, private houses and places of business, exceeded $139,000,000.

(3) Summer Resorts.

These municipalities are seashore resorts, inhabited and maintained as such for the benefit of residents and visitors. Many thousands of visitors frequent them during the summer season solely on account of the benefits and the attractions of the sea and the beach for fishing, boating, bathing and other recreational purposes. There are visitors to some of them at other seasons of the year than the summer who go there for the benefits afforded by the ocean and air.

(4) Beaches.

(a) The beaches along said frontage afford natural advantages for seashore resorts and from an early date have been well and favorably known and patronized as such. To these natural advantages have been added many

improvements for their protection and improvement, in the erection of jetties and piers, board walks and pavilions, pools and bathing facilities, ocean front casinos, and amusement facilities designed and constructed for the use and enjoyment of residents and visitors. Upon these the State and the municipalities and citizens have expended more than $14,000,000. Other projects already planned call for additional large expenditures of money. These beaches are within easy access of people residing in the metropolitan areas of New York and Philadelphia, and conveniences of travel to them are supplied by railroads, good roads, motor cars and busses. They are accordingly visited by people from these areas in great numbers as well as by people from other parts of the United States and from abroad and from all parts of New Jersey. A record kept of the number of people brought by excursions run by two railroads entering Asbury Park, during a period of years shows that in 1924 there were more than 256,000, and in 1929 more than 160,000. Its resident population is about 20,000.

The inhabitants of these municipalities depend for their livelihood chiefly upon the business of maintaining summer resorts. The ocean, with its uses and suitableness for bathing, for fishing and boating is the chief attraction which they can offer visitors. People congregate at them in numbers in the pursuit of rest, recreation, health and pleasure. Clean beaches are of the utmost importance to the comfort of visitors and the prosperity of residents at these resorts.

A large number of photographs were introduced and filed as exhibits, showing the crowded condition of beaches by people assembled there to take part in or witness the bathing and enjoy the beaches and ocean.

There are many private homes in the several towns and boroughs. In many of these the owners reside during the summer and commute to their places of business in New York, Philadelphia or some place in New Jersey.

(5) Fishing.

(a) The statutes of New Jersey provide for a license to be issued by its Board of Fish and Game Commissioners upon due application therefor for the taking of fish by means of fish pound nets, and make it unlawful to erect and maintain fish pound nets in any of the waters of the Atlantic ocean "within three nautical miles from the coast line" without first having procured such license, (N. J. P. L. 1919, page 214). Numerous citizens have constructed and operated such "fish pounds" under licenses within the prescribed area adjacent to the shore and have invested many thousands of dollars in the business of taking fish. The conduct or operation of these fish pounds and the handling of the catch gives employment to approximately 500 persons.

The fish pound nets are extended from a point about a quarter of mile from shore outward for a distance of approximately 1500 feet, in water from twenty to thirty-five feet deep, are supported by poles driven in the bottom, the pounds or traps being at the outer end. When fish feeding along the coast come in contact with the net, which serves as a wier, they turn toward deeper water, following the net and the contraption is such that the fish are thus led into the trap from which they cannot extricate themselves and from which they are taken.

More than one hundred of these fish pounds are located at divers places off the coast of plaintiff and large quantities of fish are taken annually and sold from them. The value of the fish pounds in 1928 was approximately $700,000. The fish caught amounted to approximately 25,000,000 pounds and sold for approximately $950,000. Less fish were taken in 1928 than in 1924, 1925 or 1926, but more in 1928 than in 1927.

(b) Fishing as a sport is engaged in by many persons using boats or the piers or the shore from which to cast their lines and furnishes an attractive feature of these resorts.

(6) Bathing.

(a) One of the most favored uses of said ocean front is the surf bathing. Visitors and residents are attracted by the same and when the water is not unsuitable use and enjoy surf bathing in great numbers. The continued attractiveness of the resorts depends on the water along the shore being wholesome and suitable for the purposes of summer resorts and the beaches free from pollution and unsightly or unhealthful conditions.

(7) Garbage.

Vast quantities of garbage and refuse are stranded on the beaches in question, cast thereon from and by the waters of the ocean and extending in piles and windrows along the same. The general constituents of these deposits of garbage and refuse are:

(1) Garbage of all kinds, including vegetables, such as cabbage, kale, potatoes, onions, peppers, greens, tomatoes, turnips, and other kinds; and fruits, such as oranges and grapefruit and the skins and parts of either; and melon rinds, banana skins, apples and other kinds, besides bread and pieces of meat large and small and remnants from the kitchen; and many of these when cast upon the beach are in advanced stages of decay and rottenness.

(2) Intermixed with the foregoing is frequently found a soft and grease-like matter that settles on the beach and renders passage thereon extremely disagreeable because it adheres to the feet and is odorous.

(3) Large numbers of electric light bulbs and pieces thereof; glass bottles, whole or broken.

(4) Dead dogs, dead cats and dead fowls.

(5) Pieces of wood; crates and parts of crates; bundles of paper; broken furniture; rags, cans and rubbish.

The foregoing is not an enumeration of all of the different things found in the deposits. There were introduced in evidence a great variety of things that had been found at different times upon the beaches amongst the general mass of deposits. The number of these things exceed 250 kinds. Included in these and bearing the names and addresses of business houses and concerns in New York City are such things as billheads, business cards and letterheads; paper cartons and labels, bulletins and cancelled checks; hundreds of sale slips and order and charge slips; large bundle of letters to a New York City concern; a number of "examination papers" in a college in New York City; innumerable milk bottle caps with names thereon of one or another dealer in New York City; laundry tickets, theatre tickets, restaurant tickets and menu cards; papers in large bundles; crates and paper boxes, all containing New York City addresses. A bundle of 46 letters, postmarked City of New York, dated in December, all addressed to one family in New York City.

This conglomeration is spread over and upon the beaches from high-water mark to low-water mark, littering the entire beach, and while at different beaches there frequently appears a variety such as more of the wooden things, driftwood and so forth, the general mass appears at all of the beaches affected by the particular deposit. The deposits extend long distances along the shores, sometimes in unbroken lengths of more than twenty miles and at other times is limited to the length of three or four or more of the beach fronts. At times the mass does not stop at high-water mark but is cast by the force of the waves under the boardwalks and into the street beyond. Frequently the depth of the mass exceeds one foot.

When the garbage and refuse are cast upon the beaches they must be speedly removed, especially in summer. The conglomeration of things spoken of and referred to give off offensive odors and when subjected to the sun's rays in-

crease in offensiveness and foul smelling that reach away from the shore to the streets and into the homes of the people. Swarms of flies appear on the mass and feed there. The offensive odors from these deposits cause annoyance and discomfort and nausea. They are unsightly on the beaches. Large proportions of the animal and vegetable matter forming a part of the conglomeration and being in the putrid or decaying condition must be disposed of hurriedly and are buried. Other parts are hauled away. At times it requires fifty or more truck loads to remove one deposit from a single beach. The grease-like matter is removed by rakes. The deposits of garbage and refuse pollute the beaches and produce unhealthful conditions, interfering with and frequently preventing the comfortable and enjoyable use of the beaches and the sea. It is dangerous to leave children unattended on the beach while the deposits are there because of things they may pick up; some of the things found being unmentionable. Broken glass and nails in pieces of wood have been the cause of severe wounds to persons on the beach or in bathing. The appearance and condition of the conglomeration is aptly described by witnesses as "nasty" and "filthy". It is a menace to health and tends to injure business and property values. It injures rental values. They have been made the subject of many complaints as hereafter stated.

During June, July and August, 1929, there were in Asbury Park a considerable increase over the preceding year of cases of external otitis which is a swelling or inflamation of the ear canal and of cases of infection of the middle ear, requiring the drum to be opened, and of sinus affected cases, resulting from bathing in the ocean.

Pure sea water has a high chlorine content and is quite antiseptic. Infection is contrary to the natural conditions of sea water. One or more of the Coast Guard incurred a skin infection from the water which gave them considerable trouble.

(8) Removal and Expense.

Each deposit of garbage and refuse imposes upon the municipalities affected the expense incident to its removal. Men are regularly employed to perform that duty. The cost of cleaning the beaches following such deposits at Bayhead amounted, in 1929, to $3,000; at Belmar, $2,000; at Bradley Beach, for 1928 and 1929, it exceeded $2,500; at Deal, from $1,000 to $1,500 per year; at Allenhurst, $1,000 per year; at Ocean Grove an average of approximately $275 in four years; at Seaside Park, $600 per year; at Seaside Heights, $500 per year; at Spring Lake, $300 per storm, and in 1929, $700 as the expense of one removal; and various sums at the other places, some in excess of those stated.

(9) Water and Fish Nets.

When the garbage and refuse have been cast upon the shores, as stated, it generally occurs that the water along the shore line continues to hold in suspension large quantities of the same kind of material which renders bathing therein undesirable and impracticable until the water and its undertow can carry these things away. The objectionable materials can be seen in the water and furnish the basis for many complaints by visitors and others. Usually the sea clears along the shore in a few days and at times, in a day after, the deposit on the beach.

When the garbage or refuse is cast upon the beaches it frequently occurs that fish pound nets in the vicinity of such beaches are torn by garbage or refuse in the water thrown against them, and in addition to the damage so resulting they become fouled and difficult to handle. The repair of them from the effects of the garbage and refuse costs many thousands of dollars, which must be borne by the owners. The presence of garbage and refuse in the water in the vicinity of the nets injuriously affect the business of fishing by such nets.

(10) Occur, When.

The deposits of garbage and refuse on the beaches occur when the winds are from the east or northeast. A storm or severe blow from either of these directions does and will bring the garbage, and a wind of from twenty to thirty miles an hour does also bring it to and upon the shore; as also does an east or northeast wind of two or three days duration. Sometimes the garbage and refuse are brought in by southeast winds. The heavier deposits occur on some of the beaches four or five times a season, and occur frequently throughout the year, varying in number with the different beaches.

There is no conflict in the testimony as to the foregoing general statement. The sections thereof, numbered respectively, (1) to (10), both inclusive, are made a part of my findings of fact.

(11) Dumping.

Nor is there any dispute as to the fact of the disposal by the City of New York of garbage, street sweeping and rubbish by dumping the same at sea. The defendant admits it does now and has for years since the fall of 1918, dumped these things in the ocean. It produced a statement from its records showing that it has dumped into the ocean during the last six years an average of more than a million and a third cubic yards per year; that the last year, 1929, was above that average and exceeded the amount dumped in either of the three preceding years. Reduced to tons, the disposal by dumping in the ocean during 1929 was approximately 492,000 tons. In the winter months there are less materials dumped than in the summer months. In February 1929 there were 52,000 cubic yards dumped, and in June of that year 192,000 cubic yards. These dumpings are made every day except when the weather conditions prevent. The foregoing section numbered (11), title "Dumping" is made a part of my findings of fact.

(To avoid repetition of statement I also make a part of these findings of fact, the following sections, entitled: History of Dumping, Complaints, Supervisor's Reports, Quantities, Appearance and movement, and Incinerators, numbered, respectively, from 12 to 17 inclusive.)

(12) History of Dumping.

For about twenty years prior to 1918, the City of New York disposed of its garbage and street sweepings by what is known as the "reduction system" and except for a brief period during 1906 did not dispose of these things at sea. Some necessary repairs or alterations in the reduction plant in 1906 made it necessary to dispose of these materials otherwise for a short period, and during that period they went to sea. The by-products from the "reduction system" were disposed of.

In 1918 the reduction plant at Barren Island having been destroyed by fire, occurring in 1917 and the contractor operating the one at Staten Island having failed, the city was confronted with the situation that it had no method for the disposal of its garbage and waste, and accordingly applied to the Supervisor of the Harbor of New York for permission to dispose of these materials at sea. This Supervisor of the Harbor is an officer provided for by the Act of Congress of June 29, 1888 (25 Stat. 209), entitled an "Act to prevent obstructive and injurious deposits within the Harbor and adjacent waters of New York by dumping or otherwise and to punish and prevent such offenses". This Act and some amendments thereto are made Sec. 441 *et seq.* of the U. S. Code, 44 Stat. 1072.

Under date of August 8, 1918, Dr. R. S. Copeland, then Health Commissioner of New York, addressed a communication to the Supervisor of the Harbor stating the very serious situation confronting the city because of garbage and said:

> "The only present method we have of getting rid of garbage is to dump it at sea. . . . In order to pro-

tect the health of the citizens of this city it is absolutely essential to get rid of the garbage and without delay. I trust this will meet with your approval. But I want you to understand that we do not contemplate any permanent use of so inadequate a system. It is simply a temporary expedient to bridge over an emergency."

A similar request for permission went to the Supervisor of the Harbor from the Commissioner of Street Cleaning of the city. Because of the conditions thus outlined the Supervisor of the Harbor gave permission for the dumping of garbage at sea and prescribed an area southeast of Scotland Light Ship in which it should be dumped.

Later still, complaints having reached his office from the New Jersey coasts the Supervisor designated three dumping areas, located respectively at distances of eight, twelve and twenty miles southeast of Scotland Light; the eight mile area to be used during the winter months; the twelve mile area in the early spring and late fall months, and the twenty mile area in the summer and later spring and early fall months. The shorter distances were allowed in the seasons mentioned because of the unseaworthiness of the scows in the service in the heavy seas usually prevailing during such seasons of the year and the time consumed in towing them to the dumping places and return in rough weather. The dumping areas are approximately ten, twelve and a half and twenty-two miles, respectively from the shore of New Jersey.

The practice of dumping the materials at sea, begun as an emergency, has continued, but its character as an emergency authorization does not appear to have been altered.

The materials to be dumped are loaded upon scows at designated city docks from wagons and trucks collecting them in the city. These scows are towed by tugs in tows of two or three scows to the area of disposal. Accompanying each of the tug boats is a "dumping inspector" from the office of the Supervisor of the Harbor whose duty it is to see that the dumping is done within the prescribed areas.

He is required to report on each occasion directly to said office the facts as to the scows and the place of the dumping.

(13) Complaints.

I find that complaints have been made and summarize the facts as follows:

Complaints of the condition of the beaches and adjacent waters produced by the deposit of garbage or refuse thereon have been made frequently for years by visitors to the different resorts, by residents of the municipalities and by municipal authorities, and by organizations of citizens having as a purpose the correction of these conditions. Such complaints in different forms and the conditions giving rise to them have been frequently brought to the attention of the defendant, its Mayor and other agents.

In December, 1918, a few months after the dumping at sea began defendant's Mayor requested the Supervisor of the Harbor that he authorize a change in the dumping places so as to shorten the distance to be traveled by the scows. The Supervisor declined this request, and in his letter to the Mayor called attention to conditions produced on the New Jersey shores during the year 1906, when for a short period the defendant had been authorized to dump its garbage at sea, and stated that in view of this experience he should not be called upon to "jeopardize the health of residents and the sanitary condition of the beaches along Long Island and New Jersey coasts by any modification of the conditions as to the disposition of such offensive materials as are present in operation". And he added: "As I have already stated to you in my previous communication, the deposit of this material at the mouth of the harbor is most objectionable from every point of view."

In the report hereafter mentioned, submitted to the Mayor of New York, June 1, 1921, the Committee appointed by him to report on the question of disposal of waste by the City, said amongst other things:

"Aside, however, from the question of cost it seems undesirable to dump garbage at sea as it is being done at

the present. It is known that the federal authorities quietly resent if they do not openly object to it, and there is always the possibility of objection from other communities which have in the past claimed that they have been injured by the practice."

In June, 1923, the Mayor of Asbury Park complained to the Mayor of New York of the condition. The reports of the Supervisor of the Harbor in evidence, show that repeatedly since 1920 the question of alternative plans for garbage disposal has been discussed with the city. The defendant's Commissioner of Street Cleaning department and its Corporation Counsel attended a meeting in 1923 of representatives of the organizations already mentioned as formed for the purpose of stopping the pollution of the beaches and stated in effect that the dumping would soon stop.

The several Governors of New Jersey from 1922 to 1929 have been active and earnest in bringing the beach conditions arising from garbage cast thereon to the attention of the Mayor of New York, and have appealed to the Secretary of War for relief. The Secretary of War has directed the Supervisor of the Harbor to bring these conditions to the attention of the City and has urged on the Mayor the "importance of early completion" of the plans for incinerators.

These beach conditions with promises to seek remedies against their continuance have been the subject of platform declaration by one or both of the two major political parties in New Jersey from 1922 to 1929.

Governor Sulzer in 1924 and 1926, Governor Moore in 1927 and Governor Larsen in 1929 discussed the same subject in their annual messages.

It has been the subject of joint resolutions by the legislature in 1927 and 1928 and 1929.

The City of New York, through its Mayor and other responsible agencies, has been informed of these beach conditions and their injurious effect together with the desire

of the people of New Jersey that they cease, and this information has been repeatedly given said city.

(14) Supervisor's Reports.

The Reports of the Supervisor of the Harbor of New York, included in the annual report of the Chief of Engineers for the years 1918 to 1929, inclusive, mention the fact that the defendant's garbage is being disposed of at sea. The report for 1918 states that because of the destruction of the plant at Barren Island "it was necessary to dispose of this objectionable material at sea", and that the point designated for its disposal was fifteen miles southeast of Scotland Light.

In 1919 the report stated that "the practice of disposing of garbage at sea has continued." In 1920 the report states: "About two years ago at the request of the New York City Commissioner of Street Cleaning and the urgent solicitation of the Commissioner of Health the Supervisor authorized the disposal of city garbage at sea as a temporary measure to continue for two or three months only. The practice still continues and there is no prospect of an immediate change." The substance of this statement appears in the reports for the subsequent years.

In a letter dated September 10, 1925, from the Secretary of War, in response to one from the Governor of New Jersey complaining of garbage conditions on the shores of the State, the Secretary disclaimed that any authority to dump garbage emanated from his office but stated that permission had been granted by the Supervisor of the Harbor in New York.

The disposal of its garbage at sea has continued except that in February, 1924, there was put in operation by the City of New York a 300-ton "incinerating" plant, the first plant after the cessation of the "reduction system". In November, 1925, another incinerating plant was put in operation, and since then additional incinerating plants have been put in operation.

(15) Quantities.

The amount of garbage and refuse dumped in 1924 was approximately 1,675,000 cubic yards; and in that year one incinerating plant was in operation. In 1925 the amount was approximately 1,500,000 cubic yards, a second incinerating plant going into operation in November of that year. In 1926 the amount was approximately 1,300,000 cubic yards; in 1927, 1,200,000 cubic yards and in 1928 an increase over the last figure; while in 1929 the amount rose to 1,478,165 cubic yards, though there were in operation nineteen incinerating plants. The amount in tons is obtained by dividing the cubic yards by three. It therefore appears that during 1929 there were 492,721 tons dumped; an average of more than 40,000 tons per month.

The dumping goes on each day except when the weather prevents taking the scows to sea, which latter increases the amount that must be dumped when the scows can go to sea. The daily average exceeds 1,000 tons per day. The daily average over the year's operation does not reflect the conditions as they are because less garbage is dumped in winter than in summer. Thus in February, 1929, there were dumped about 52,000 cubic yards, something over 17,000 tons; while in June of that year there were dumped approximately 192,000 cubic yards, or 64,000 tons; a daily average of more than 2,000 tons.

(16) Appearance and Movement.

When the dumping areas is reached, the side gates of the scow are opened upon signal from the tugs, and the contents slide to the water. These are intermixtures of garbage, street sweepings and rubbish. When they slide from the scow, large portions sink, but other large portions float on the surface or are held in suspension by the water. The facts confirm the statement made by a Commission appointed by the Mayor of New York in June, 1907, hereto-

fore mentioned, that "unfortunately the less harmful material sinks and the foulest floats." These floating and the suspended materials spread in a mass extending at times six or more miles in length, of varying widths, and interspersed with lanes or "slicks", the latter so-called because of grease particles on the surface. Such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement. The mass moves at times westward and northward or towards the shores of New Jersey or Long Island, according to the direction and velocity of the wind.

The plaintiff caused an investigation to be made at the dumping places in the summer of 1929, of the conditions there when the scows discharged their contents. The persons making these investigations made more than thirty different trips to the dumping places, and on at least fourteen of them were close by when the scows dumped their contents, and they observed the same.

The defendant sent to the dumping areas on three occasions in February and March, 1930, persons to examine and report upon conditions. The Supervisor of the Harbor sent an agent to these areas to investigate the floating garbage in February, March and April of 1929, and this agent made six trips. They all concur in the general conclusion, and I find it to be a fact that the mass spreads out on the surface of the water, gradually breaking up into smaller areas and moving for indefinite periods with the wind, some of the materials being on the surface and some in suspension. The Supervisor's agent, instructed to follow the floating mass for 24 hours, found on one occasion that the garbage went about fourteen miles in twelve hours, the drift being toward the Narrows; on another occasion the drift being westward under a variable east wind from three to thirty-five miles, went seventeen miles in 24 hours, and was about six miles off the New Jersey shore when he left.

A large number of fishermen whose business is lobster fishing, taking them for miles out from the shore, were examined as witnesses. Many of these men go out every day and have followed their avocation for many years. They have frequently seen the dumping and the masses of floating garbage that followed. Their boats pass through or around such masses as they go or come. The mass is so thick at times that boats cannot go through it. They have seen these floating areas of garbage and refuse at various points between the dumping places and the New Jersey shore, and some have followed it from the dumping place to where it went ashore.

Members of the Coast Guard from different stations on the New Jersey shore have frequently seen floating areas of garbage and refuse near the shore and at some distances from the shore, the area varying in size from several acres to narrow strips. Parts or areas of these masses of garbage or refuse in suspension appear frequently, and are seen at short distances off shore, by persons on the shore, and some are encountered by persons in pleasure boats or fishing boats at divers places off shore.

While the parties sent to the dumping places by plaintiff were there, a photographer among them took a number of photographs showing the conditions of the garbage on the water, which were introduced in evidence. A number of the fishermen identified conditions which they had witnessed as being similar to those shown by some of these exhibits. The parties sent out as stated by plaintiff cast into the mass on several occasions a large number of sealed bottles containing self-addressed and stamped cards, with the request that any finder return them by mail. About twenty-five per cent of these cards came back to the parties by mail from persons along the New Jersey shore and Long Island shore, and some from farther north.

During fourteen times these persons went out in May, June and July of 1929, they made a list of things seen in the water after the scows were dumped. This list contains

the identical kinds of materials that are heretofore stated to constitute the deposits on shore: fruits and fruit skins; vegetables, electric light bulbs, papers and rags, wooden boxes, crating, pasteboard boxes, dead animals and many other things. The mass falling from the scows forms piles a foot clear of water. Gradually displacement takes place, and the heavier stuffs, finding their way through the floating mass, sink.

The odors arising from the mass are offensive and nauseating. The Supervisor of the Harbor of New York, in his report to the Chief of Engineers in 1918, said: "Garbage deposited at sea, no matter what the distance from shore, is apt to wash up on the beaches." In each of his subsequent reports it is said in substance: "Experience indicates that garbage at sea at no matter what distance is liable to wash up on the beaches."

I find that large parts of these floating and submerged areas of garbage and refuse, dumped by the defendant, are driven and carried by winds and water to and upon the shores of the plaintiff, and constitute the objectionable materials thereon and in the adjacent water, hereinbefore described, and that the winds in such cases come from the east or the northeast, and sometimes from the southeast, as has been heretofore found.

(17) Incinerators.

As hereinbefore stated, the method of garbage disposal in use by defendant prior to October, 1918, was what was known as the "Reduction System", by which the by-products were conserved. It began the disposal of garbage and refuse at sea in October, 1918 and has continued the same. In the meantime, however, it has built a number of incinerators as will later appear.

In 1920, a Committee was appointed by the Mayor of New York to report upon the subject of "Collection and Disposal of City Waste." This committee was composed of the heads of departments and officials, including the

Health Commissioner of the State, who had requested permission for the disposal by the city of its garbage at sea, as hereinbefore stated. The report to the defendant's Mayor, dated June 1, 1921, was introduced in evidence. Asserting that "There is perhaps no more important or difficult task confronting any municipality than this one of waste removal," the Report made estimates based upon the data before the committee that in the Boroughs of Manhattan, the Bronx, and Brooklyn alone, the Street Cleaning Department in 1920 disposed of about ten million cubic yards of "ashes, rubbish, street sweepings, garbage and dead animals", or approximately 270,000 tons of rubbish, 440,000 tons of garbage and 300,000 tons of street sweepings." And further estimated that the number of dead animals, aside from "large animals" amounted in 1920 to 217,600 small animals, such as sheep, calves, hogs, cats and dogs.

As to the method of disposal of garbage they reported: "The greatest objection to the present system of disposing of waste materials is in connection with the method now being used for getting rid of garbage, which is both unsanitary and uneconomical. For some years the disposal of garbage not only did not cost the city anything, but as a matter of fact returned a small yearly profit. . . . Aside, however, from the question of cost it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent, if they do not openly object to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal."

The Committee made no final recommendation for the disposition of garbage, as to the method of incineration or reduction, pending further investigation.

Long prior to the foregoing report, which was made June 1, 1921, a report had been made by a Commission consisting of distinguished consulting engineers, appointed by Mayor McClellan of New York which reported to him on December 31, 1907 upon the question of street cleaning and waste disposal. This report is known as the Parsons, Henry and Whinnery Report. This Committee reported adversely to dumping garbage and refuse at sea, among other things saying: "All of the refuse collections could be dumped into the Atlantic ocean, but unfortunately the least harmful material sinks and the foulest floats, so that much of the floatable mass will be scattered along beaches through the action of current and wind. This fouling of beaches creates a nuisance that the public should not be asked to tolerate."

Mr. Samuel A. Greeley, an hydraulic and sanitary engineer of recognized experience and ability, with practical knowledge of the methods of the disposal of garbage, condemned the method of disposing of garbage and refuse at sea for very much the same reasons given by the Committee above mentioned in their report of 1921. He gave as his opinion that either incineration or the "Reduction System" is good.

Considerable portions of its garbage and refuse collected by the defendant has been and is being disposed of by incinerators constructed by the defendant. The first of these was put in operation in 1924, some five years after the dumping at sea began. In December, 1929, the defandant had in operation three incinerators in the Borough of Manhattan, none in the Bronx, nine in Queens, five in Brooklyn and three in Richmond.

The Department of Sanitation in New York City is a newly created one under the law and went into effect on December 1, 1929. In took over the jurisdiction formerly exercised by the Department of Street cleaning and some other agencies of the City. On December 23, 1929, the new Department of Sanitation presented to the Mayor of the City a program for increasing the number of incinerators

in the five boroughs as follows: Five 500-ton plants in Manhattan; four 500-ton plants in the Bronx; five 500-ton plants in Queens and five 500-ton plants in Brooklyn, and the reconstruction of two plants in Richmond.

The City now has the power of condemnation, which it did not have prior to 1929. It does not appear what if any action has been taken by the Mayor or city authorities upon the program presented by the new Department of Sanitation.

The evidence does not show the cause of the apparent delay by the defendant in adopting and putting into operation the incinerating system. It was in 1924, some five years after the defendant began dumping at sea that its first incinerator was put into operation, and during the next succeeding five years others were built. Those constructed and in use fall far short of taking care of the garbage and refuse situation. A reason offered for the delay is that the City did not have the power of condemnation and could not override objections in localities to the operation of incinerators therein. This power was acquired in 1929 and there is no evidence explaining why it was not acquired sooner.

I conclude that the method of disposing of garbage and refuse by dumping the same at sea is not an approved or a good system and that disposition of such material by incineration or the "Reduction system" is a proper way to dispose of the same. I further conclude that the delay of defendant in adopting a proper method of disposal has been unreasonably long.

SOME ISSUES OF FACT.

The defendant contends, however, that the garbage and refuse on the beaches result from the disposals, first by steamships, and second, by scows of private contractors and by some others to be named.

(1) Steamships: It is to be observed that the lanes for European and foreign vessels to and from New York pass to the north and east of the designated dumping areas; that is to say, these dumping areas are between the lanes and the shores.

(a) There is evidence that some coastwise and other vessels discharge garbage or refuse into the ocean. Vessels out of New York go southward or come from southern ports to New York, passing the New Jersey coast at a distance of from three to eight miles and their general routes lie between the dumping places of the City and the shores.

The evidence as to the number of such vessels is that produced by the defendant to the effect that in December, 1928 and January of 1929 there were 1227 vessels entering the Port of New York from southern ports, and during July and August of 1929 the number was 1892. That the number clearing from New York for southern ports in December, 1928 and January, 1929, was 1173; and in July and August, 1929 was 1192. Whether freight or passenger vessels, or the relative number of each does not appear, but if it be assumed that the vessels in and out of New York for the four months mentioned represent a fair average of the number for each month of the year and that the average per day is the same for the different years the result would show that approximately thirty entered from southern ports and twenty departed from New York for southern ports each day, the difference in number in those coming in and those going out being accounted for by the fact that some entering New York from southern ports clear therefrom for other than southern ports.

A witness introduced by the defendant, being one of the three sent out by the defendant to examine the conditions at the dumping places, and a pilot of experience, made an estimate to the effect that there were twenty vessels a day going and coming from southern ports to New York.

The direction of the vessels, whether going to or clearing from New York affects the amount and kind of material

they discharge. Thus vessels coming from southern ports discharge their garbage and refuse about as fast as it is produced, or shortly after leaving their last port of call, except vessels coming from nearby places, such as Philadelphia to New York, which are supposed to discharge their garbage and refuse after leaving Delaware breakwater and there is no reason to assume that the vessels from southern ports allow these things to accumulate until they arrive off the New Jersey coast.

(b) On the other hand the vessels in New York harbor which provide for their crews while in port and which do not provide for the disposal of garbage and refuse while in port (as some vessels and lines do arrange) have to get rid of the same after getting out of the harbor. The sweepings from the cargo, the cleanings from the ships, including dunnage and such crates and boxes as may have accumulated and other materials are piled upon the deck together with garbage preparatory to casting the same overboard after the vessels have gotten under way. There is evidence that some of the vessels and a majority of the lines operating out of New York southward do not accumulate garbage or other refuse matter but make arrangements for its disposal while in port. Crews of some vessels are maintained on board and crews of others are not maintained while in port. There is evidence that some vessels southbound begin the disposition of their accumulated garbage, refuse and rubbish soon after leaving the point southwest of Scotland Light and continue to discharge as they proceed. There is an estimated amount by two or three witnesses for the defendant, being the same witnesses who went out to make the investigation at the dumping areas for the defendant, that forty to fifty tons are discharged from some of these vessels leaving New York. The amount of the garbage that is intermixed with the other materials is not stated or estimated.

(c) In 1924 owing to complaints to his office of garbage reaching the shore, the Supervisor of the Harbor sent re-

quests to all shipping companies that their vessels refrain from discharging garbage within twenty-five miles of Ambrose Lightship, and received from many of them assurance of their cooperation.

(d) There is evidence by one of the witnesses already mentioned for the defendant that vessels, sometimes as many as fifty, coming to New York, are held by fog or heavy seas at anchor off the lightship for a day or two, and while there throw overboard their accumulated garbage and refuse material.

There is testimony by a special agent of the defendant's department of sanitation, giving the location of various docks of scows of private contractors in the borough of Manhattan, and that on several occasions in March, 1930, he visited some of these dumps and saw wagons and trucks dumping into these scows a variety of materials; and two other witnesses testified to similar conditions.

There is no evidence that any garbage or refuse from these places is dumped at sea. There is no evidence that scows receiving the materials mentioned by the three witnesses in March, 1930, dumped the same at sea, or where they disposed of it.

On the other hand there is testimony from officers of ships operating along the coast that a few bushels of garbage is cast overboard from vessels coming out of New York and largely taken up by gulls; and some members of the Coast Guard testified that they have seen ships cast off garbage in small quantities, these expressing the opinion that the quantities are too small to account for the areas floating or in suspension in the water.

(e) There is evidence that a foreign steamship was seen to discharge garbage on an occasion in or near the waters of New York Harbor, and a photograph of the vessel on that occasion was made an exhibit.

(f) There is evidence that a witness had taken on his vessel a cargo of condemned onions and discharged the

same at sea twenty-five miles southeast of Scotland Lightship.

(f) There is evidence that permits had been issued by the Supervisor of the Harbor to five different concerns to dump mud off shore at points designated as three mile limit southeast of Scotland Lightship, and to three others to dump "cellar dirt" at the four mile limit; and to several to dump "cellar dirt intermixed with rock" at the six mile limit. These concerns dumped the materials mentioned at the various places. Some other materials are permitted to be dumped at the eight mile limit.

(h) From time to time and infrequently cargoes of foodstuffs, vegetables and fruits, condemned by the Board of Health authorities, are disposed of at sea by outbound vessels under permits, the amounts being relatively small. Such deposits are beyond the area used by the defendant. A system of patrol boats and of inspection is maintained by the Supervisor of the Harbor to prevent depositing materials at other than the stated areas.

(i) Scows from the Brooklyn Navy Yard dump materials at the dumping areas used by the defendant, their contents being generally rubbish and refuse with a small amount of garbage.

(g) Another source alleged by the defendant in its amended answer "for a Second defense" is that insufficiently treated and unsanitary sewage from the City of Long Branch and of Asbury Park has been for a number of years discharged into the ocean at short distances from each of these cities.

As to the Long Branch sewer, the evidence consists of a plan of the sewage system and some evidence that complaints were at one time made to the Department of Health which investigated the same; and that the matters were satisfactorily adjusted.

As to Asbury Park sewage, there is evidence that in March, 1930, witnesses for the defendant made an examination of that system and at the outlet of the sewer about

1,000 feet off shore found emerging from the sewer outlet fecal, and vegetable matter and fruit peelings. This phase was explained in rebuttal by the Superintendent of the Water and Sewers in that city, who described the system used, that the sewage collected by the regular intercepting system and no fecal matter goes out. He explained that about once a year, and in winter as a convenient time, there is an opening of the "blow-off gates to relieve the sludge tank of its load", and having properly cleaned and washed the tank, the valve is again closed, and that during the period of this operation materials may go into the outlet that cannot go there when the valve is closed; that this kind of cleaning process was in operation on March 19, 1930, the date of said visits by said witnesses.

Defendant also introduced a bill of complaint exhibited by the Department of Health of New Jersey against Asbury Park in Chancery in New Jersey, praying an injunction restraining that city from discharging into the ocean inadequately treated sewage from the "municipal sewage treatment works", which discharge, it is alleged, is due to insufficient capacity and design of said works. These works were constructed in 1909. This bill was filed in the summer of 1930, under a proceeding authorized by the statutes of New Jersey.

I have set forth in perhaps unnecessary detail some of the evidence offered by the defendant and have done so (1) to show the latitude extended in adducing proof when much of it under the general denials of the original answer would in strictness be inadmissible. It was generally heard without objection. And (2) to show something of the indefiniteness of the testimony itself.

Manifestly the proof offered by the defendant leaves much to surmise and speculation. Testimony that some vessels discharged garbage and refuse after clearing from New York falls short of establishing a custom by other vessels. Proof that employes of the defendant saw garbage and refuse dumped into scows of private contractors

in March, 1930, has small probative force towards establishing what occurred in 1929 and prior years.

There is proof that some vessels discharge garbage and refuse and that scows with permits to dump cellar dirt frequently have with it pieces of wood in more or less quantities, besides other proof referred to.

Giving to the evidence due consideration, I think it should be concluded that whatever garbage and refuse reaches the plaintiff's shores from coastwise and other vessels and other causes, and other dumpings than those of the defendant, are negligible in comparison with that constantly being dumped by the defendant, and frequently carried by winds and waves from the dumping places to and upon plaintiff's shores, as hereinbefore stated.

SOME QUESTIONS OF LAW.

Some questions of law arising between the parties are as follows:

1. The plaintiff's contention that defendant dumps its garbage in water over soil belonging to plaintiff, that is to say, in the waters of its marginal sea.

2. Effect of permits issued by the Supervisor of the Harbor of New York to defendant.

3. The question of nuisance.

4. Prescription.

5. Degree of proof.

6. Jurisdiction.

1. Trespass.

The plaintiff contends that the dumping of garbage by defendant is upon its property and therefore constitutes trespass.

As the farthest place of the dumping is more than twenty miles from the New Jersey shore, the claim that the "marginal sea" of the State extends to and beyond that point is at least interesting. It is, of course, true that within its territorial limits property rights are to be measured by the rules and decisions of the courts of the State, and that these will be followed by this Court (*St. Anthony Falls Co.* v. *Board,* 168 U. S. 349, 362; *Baum* v. *Keohm,* 94 U. S. 324, 338; *Rundell* v. *D. & R. Canal,* 20 Howard 80 and 93). But the plaintiff insists that the limit of its marginal sea is not to be measured from the low water line on its shore but from a line drawn between two headlands projecting the one at Montauk Point, New York, and the other at Cape May, New Jersey, and seeks to apply the rule of the common law for determining whether the head or arm of the sea was within the jurisdiction of a given county or outside of it and therefore under the jurisdiction of the sovereign alone.

This method for determining the county's jurisdiction was that the distance between the *terrae fauces* should be no greater than to render it possible for a person to discern with the naked eye what was being done on the opposite shore. Plaintiff argues that in this country "we thus determine the jurisdiction of states rather than of counties".

This Court said in *Manchester* v. *Massachusetts* (139 U. S. 240, 263), that "there is no indication that the customary law of England in regard to the boundaries of counties was adopted by the Constitution of the United States as a means of determining jurisdiction of states." The Court was there considering a contention that the jurisdiction of the State as between it and the United States should be confined to the border of the counties and that the counties should be defined according to the customary English usage, by the application of the rule as to headlands. This Court said (page 264): "The extent of the territorial jurisdiction of Massachusetts over the sea

adjacent to its coasts is that of an independent nation and except in so far as any right of control over this territory has been granted to the United States this control remains with the state."

In *Martin* v. *Waddell* (16 Pet. 307, 410), language from which is applicable to New Jersey, this Court said: "For when the Revolution took place the people of each state became themselves sovereign and in that character hold the absolute right to all their navigable waters and the shores to them for their own common use, subject only to the right since surrendered by the Constitution to the general Government." To the same effect see *Illinois Central Railroad Company* v. *Illinois* (146 U. S. 387).

At the time the plaintiff became a state, succeeding to the rights of English sovereign, the common law rule was that the territorial limit extended "only to such distance as is capable of command from the shore of the range of a cannon, which for the purposes of certainty is regarded as one marine league, although for the purposes of self-protection in times of war and for the prevention of fraud upon its revenues each nation is accustomed to exercise authority beyond this limit. (Gould on Waters, 3; Angell on Tidewaters, 2.)

In *Manchester* v. *Massachusetts, supra,* this Court said (p. 258): "We think it must be regarded as established that as between nations the minimum limit of territorial jurisdiction of a nation over tide water is a marine league from its coast; that bays wholly within its territory, not exceeding two marine leagues in width at the mouth are without this limit, and that included in this territorial jurisdiction is the right of control over fisheries. . . . The open sea within this limit is, of course, subject to common law rights of navigation and the government for the purpose of self-protection in times of war or for the protection from fraud on its revenues, exercises authority beyond this limit."

In *Cunard Steamship Company* v. *Mellon* (262 U. S. 100, 122), this Court said: "It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land area under its dominion and control, the ports, harbors, bays and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league or three geographical miles."

The view of Chancellor Kent (1 Kent Com. 30) and of other writers on international law cited by complainant, that our Government could reasonably assume the control over waters of our coast "though included within lines stretching from quite distant headlands", as for instance from Nantucket to Mantauk Point, and from that point to capes of Delaware, and from Florida to the Mississippi River, do not serve to increase the territorial limits of a state. The headlands mentioned are not the *"terrae fauces"* of the common law, which involved points within the territory of one sovereign. The assertion by the general Government of power conferred by the States does not operate to increase the territorial limits of a State. The treaty making power and that of providing for the common defense, as well as the power applicable to commerce and navigation admit of the assertion of claims by the United States no longer open to the several States. (*United States* v. *Rauscher,* 119 U. S. 407, 418; *Gibbons* v. *Ogden,* 9 Wheat. 1; *Maiorano* v. *Baltimore Road,* 213 U. S. 268, 272.)

As a practical expression by the Federal Government on this question there may be mentioned the comparatively recent treaty with Great Britain relative to infractions of the Prohibition Laws and fixing a limit, sometimes called the "Twelve Mile Limit", Article I of which provides:

> "The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards

and measured from law water mark constitutes the proper limit of territorial waters". (See *Ford* v. *United States*, 273 U. S. 593, 607.)

The State of New Jersey succeeded to rights of the English crown. (See *Martin* v. *Waddell*, *supra*, citing *Arnold* v. *Munday*, 6 N. J. L. 1).

In its first constitution, adopted July 2, 1776, Art. XXII, it is provided: "That the common law of England as well as so much of the statute laws as have been heretofore practiced in this colony shall still remain in force until they shall be altered by future law of the legislature". (1 Comp. Stat. XXXII).

And in its present constitution, it is provided that the common law and statute law "now in force" and not repugnant to the constitution shall remain in force until altered or repealed. (I Comp. Stat. XLVII).

The Statute of New Jersey defining the boundary of counties provides (109 Sec. I), the "territorial limits of each county of this State fronting upon the sea coast be and the same are hereby extended to a line parallel with the ocean shore line of said counties and extend easterly three nautical miles therefrom and the division lines between said counties as they now exist be and the same hereby are extended from the several points where they now reach the sea in course due east until they severally reach said outer line of said counties as hereby established." (2 Comp. Stat., p. 1703, Public Laws of 1906, p. 542).

Reference has already been made to the Act requiring licenses for pound net fishing. Another Act (2 Comp. Stat, Sec. 123, p. 252) makes it unlawful for any person to take with "purse or shirred nets" certain fish in any county within the jurisdiction of this State, including a county on the Atlantic ocean within three nautical miles of the coast line."

In *Gough* v. *Bell* (22 N. J. L. 411, 455), it is said: "This title, which by the common law of England is vested in the King, upon the Revolution became vested in the people of

the State. . . . In this State the rule of the common law as to the limit of its rights remains unaltered."

I think the established rule of the common law should be accepted in determining the territorial limits of New Jersey in the soil under water and that its claim that the dumping of garbage is upon its property is not sustained.

As before stated, large areas of garbage and refuse floating upon or held in suspension by the water, which have been dumped by defendant's scows, are driven and carried by wind and water to and upon the shores of plaintiff and other portions or areas thereof are held for indefinite periods in the waters above soil owned by plaintiff and do great injury to fishing and bathing in such waters.

2. Permits.

In its amended answer the defendant alleges "for a first defense" that it has, for many years last past dumped the garbage and some refuse collected by it in the Atlantic ocean, under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said Supervisor under the authority conferred on him by the Act of June 29, 1888" (29 Stat. 209, as amended; Secs. 441, 443, 449 and 451 U. S. Code) "at points eight, twelve and twenty miles southeast of Scotland Light and about ten, twelve and a half and twenty-two miles distant, respectively, from the New Jersey shore (being clearly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States" and adds that "such dumping occurring at these points this Court has no authority to enjoin said City . . . from said dumping of garbage and refuse".

The plaintiff insists that there is no evidence of any permits.

It is a fact that no written permit was introduced in evidence but this is not to say that there is no evidence of permits.

A witness introduced by defendant and afterwards by the plaintiff in rebuttal was Captain Anderson, detailed under the provisions of the Act of June 29, 1888, to perform the duties of Supervisor of the Harbor of New York. Captain Anderson, having made a general statement relative to the duties of his office under the Act was asked:

"Q. Permits have been issued by your office to the city of New York to dispose of garbage and refuse material at sea?

"A. They have.

"Q. Will you explain for our information as well as for the record just how these permits are issued, the procedure so that we may understand for the first time how that is done?

"A. In issuing these permits we have dealt directly with the old department of street cleaning, which is now a division of the Department of Sanitation. They have to apply on a printed form for permission to move and dispose of whatever class of material they may have. We have certain dumping grounds that are customarily used and if their request meets the approval of the office the permission is granted and the permit is issued. This permit is good for only a limited number of days.

"Q. And as the barges and tows proceed to sea under permit is there some representative of your office stationed in the upper and lower Bay to inspect or collect this permit?

"A. On these two boats, towing loads of that description we have an inspector, called a dumping inspector, whose job it is to see that the dumping does not take place short of the designated dumping ground. Also we have on duty patrol boats from my office which are customarily stationed in the vicinity of the Narrows and around Sandy Hook and a little outside and these boats inspect outward and inbound tows and make appropriate notation upon their permit, which they collect." The statute contemplates that they will be collected.

This witness further explained that the officers on the patrol boats noted the time of passing and returning by the tows and these notations "are subsequently checked up in my office to see whether the lapsed time would permit them to go to designated dumping ground."

This officer had testified, as stated, without objection, that permits were issued to the defendant. In addition, the plaintiff has shown by repeated statements in the reports of the Supervisor made a part of the annual reports of the Chief of Engineers for the years 1918 to 1929, inclusive, introduced in evidence, that the Supervisor had given permission to the defendant to dispose of garbage and refuse at designated places, and had also shown by the letter of the Secretary of War to the Governor of the State that the "permission" was given by the Supervisor of the Harbor and not by the office of the Secretary of War to dump the garbage in an "emergency"; and further by the Supervisor's statement to the Mayor of the City when the latter requested a change in the designated area.

In addition to these it affirmatively appears in evidence not only that this officer designated the place where the dumping could be done but there went from his office with each tug towing the scows a "deputy inspector" to see to it that the dumping actually took place at the designated places. The established fact is that the defendant had the Supervisor's authority to dump the materials, whatever that authority may amount to, and would seem to make unnecessary the production of one or all of the "permits", which in the ordinary practice of the Supervisor's office, would amount, in ten or twelve years, to probably a thousand or more. I find as a fact that the dumping was by permission of the Supervisor of the Harbor.

The Act of 1888, (U. S. Code, Secs. 441 *et seq.* 44 Stat. 1072) was entitled "An Act to prevent obstructive and injurious deposits within the Harbor and adjacent waters of New York City by dumping or otherwise and to punish and prevent such offenses."

This Act, amended in 1898 (U. S. Code, Sec. 443), provided that a line officer of the Navy shall be designated by the President as Supervisor of the Harbor "to Act under the direction of the Secretary of War in enforcing" its provisions. Depositing of certain kinds of materials in the tidal waters of New York or its adjacent tributaries or in those of Long Island Sound "within the limit which shall be prescribed by the Supervisor of the Harbor" are strictly forbidden. One section provided for a permit defining the precise limits within which the discharge of the scows may be made.

Material parts of the Act of 1888, and the amendment of 1898, are as follows: Section 441 and 443 U. S. Code—

> Title 33. Secs. 441. *Deposit of refuse in New York Harbor and adjacent waters prohibited; penalty.*—The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by a fine or imprisonment, or both, such fine to be not less than 250 nor more than $2,500, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. (June 29, 1888, c. 496, 1, 25 Stat. 209.)
>
> Sec. 443. *Permit for dumping; penalty for taking or towing boat or scow without permit.*—In all cases

of receiving on board of any scows or boats such forbidden matter or substance as described in section 441 of this chapter, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed, as provided in section 451 of this chapter, a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $1,000 nor less than $500, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (May 28, 1908, c. 212, 8, 35 Stat. 426.)

In *United States* v. *Sadie* (41 Fed. 396) Judge Lacombe speaking of this Act of 1888 says (p. 398): "The bodies of water referred to are (a) the Harbor of New York; (b) waters adjacent to the Harbor of New York; (c) waters tributary to the Harbor of New York; (d) Long Island Sound, and as to each of these bodies of water there is a restriction of application of the Act to such waters only as are tidal."

In the present inquiry only the first two of these descriptions can apply: the Harbor and waters adjacent to the Harbor of New York.

The Act contemplated that the Supervisor prescribe certain limits but there is no evidence in this case as to what limits were prescribed. In *City* v. *Leland* (45 Fed. 380, 381), there is reference to certain prescribed limits.

A construction of the Act of 1888, as amended, becomes important. The defendant relies upon the "permit" or

the permission granted by the Supervisor of the Harbor; who has no authority other than that which the Act confers. It may be noted in this conection that this Act is not affected by the Rivers and Harbors Act of March 3, 1899 (U. S. Code, Title 33, Section 407). The latter is a general Act and as was observed by Judge Thatcher in "The Albania" (30 Fed. (2) 727) Sec. 441, *et seq.* of the Code (the Act of 1888) is a special Act applied to New York Harbor and vicinity and it may be repeated in this connection that the Secretary of War in a communication to the Governor of New Jersey stated that the dumping by New York City was through permission of the Supervisor of the Harbor and not by the Secretary. But the purport of the Act of 1888, as was that of the general Rivers and Harbors Act of 1899, is referable to the power of Congress to legislate for the protection of navigation.

There can be no doubt that the dumping was not within the limits of Harbor of New York, as these limits are spoken of in *United States* v. *Newark Meadows Improvement Company* (173 Fed. 426, 428), as being "within a line from Navesink Lighthouse to Scotland Light thence to Whistling Buoy in Gedneny's Channel and thence to Rockaway Point prescribed by the Secretary of the Treasury as the limits of the waters of the Harbor of New York," pursuant to the Act of February 2, 1895, (28 Stat. 672). It was done at eight, twelve and twenty miles, according to the season of the year, southeast by east from Scotland Light, one of the points in the foregoing description.

In *United States* v. *Various Tugs and Scows* (225 Fed. 505), where it appeared that permits had been issued, it was said by Judge Hand (p. 507): "It seems to me that a permit to dump no less than four miles east by southeast of Scotland Light Ship excludes by implication dumping within New York Harbor and its adjacent and tributary waters inside of that point and thus defines the precise limit." He added that even though the limits prescribed by the Supervisor are beyond a marine league from the shore any other interpretation of the national power would

render the Government impotent to protect the harbor and adjacent channel and waters. In order to sustain a conviction under the Act it was held in *Warner Quinlan* v. *United States* (273 Fed. 503), to be necessary for the evidence to show that the Supervisor had prescribed such limits and that the defendant had placed such materials within such limits.

If the limits of the adjacent waters be taken as prescribed by the designation of the places by which dumping was allowable (*U. S.* v. *Various Tugs and Scows, supra*), it is manifest from the distance given that the limits are in excess of "one marine league from said shore" to use the words of the amended answer; but it is difficult to understand how this fact affords any defense in this case. If the defendant did not dump the materials nearer than the designated areas the Supervisor's permission would afford protection against penalties of the Act. But can it be said that these permits serve as a defense against the claim of others whose rights have been invaded?

The purpose of the Act is to protect navigation with reference to New York harbor. The authority of the Federal Government does not extend beyond the requirements of navigation. (*Wisconsin* v. *Illinois*, 278 U. S. 367-415.)

In *Cummings* v. *Chicago* (188 U. S. 410, 431), it was said with reference to Section 10 of the Rivers and Harbors Act of 1899, that its effect "reasonably interpreted is to make the erection of a structure in a navigable river within the limits of a state depend upon the concurrent and joint assent of both national government and the state government. . . . Without such assent the structure can not be erected by them." (*United States* v. *Bellingham Bay Boom Company*, 176 U. S. 211).

In *Port of Seattle* v. *Oregon and Washington Road Company* (255 U. S. 55, 63), it is said: "The right of the use of the navigable waters within the several states is limited to the control thereof for purpose of navigation."

And in *United States* v. *River Range Improvement Company* (269 U. S. 411, 419), this Court says: "While Con-

gress in the exercise of this power may adopt, in its judgment, any means having some positive relation to the control of navigation and not otherwise inconsistent with the Constitution of the United States (*United States* v. *Chandler-Dunbar Company,* 229 U. S. 62), it may not arbitrarily destroy or impair the rights of riparian owners by legislation which has no relation or substantial relation to the control of navigation or appropriate to that end." (See *Wisconsin* v. *Illinois,* 278 U. S. 367, 415.)

The authority conferred by the Act of 1888 upon the Supervisor was not as general as that found in the Rivers and Harbors Act, nor was it an arbitrary power. So far as the defendant's acts are concerned his authority was only permissive. The title of the original Act (that of 1888) shows its purpose was to protect the Harbor of New York. When the powers of the Supervisor are limited to that purpose they do not purport to extend to a general authorization to regulate the dumping of garbage outside of the waters specified in the Act.

The powers which the Suprevisor has under the Statute and the effect to be given the permits authorized to be issued are to be strictly construed, because of the effect of the dumping upon the rights of others. "The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property franchises or privileges in which the government or the public has an interest. . . . Whatever is not unequivocably granted is withheld; nothing passes by mere implication". *Coosa Mining Co.* v. *So. Carolina,* 144 U. S. 550, 562; *Fertilized Co.* v. *Hyde Park,* 97 U. S. 659, 666.

In order to accord to the act full scope as a shield for protection, it is not necessary to make of it also a sword of offense.

Nor does the fact that the defendant is a municipal corporation afford immunity from the results of its own action. It was said by the *Massachusetts Court in Haskell* v. *New Bedford* (108 Mass. 208, 214): "The owner of any lands bordering upon the sea may lawfully throw refuse

matters into it provided he does not create a nuisance to others. But it by no means follows that either the city or any private person has the right to deposit filth upon the seashore in such quantities as to create a nuisance to health or navigation. (See *Brayton* v. *Fall River*, 113 Mass. 218, 230). This case quotes and approves *Franklyn Wharf* v. *Portland* (57 Me. 446, 457), to the effect that "The right of defendant to construct an outfall for their sewer in the sea does not include the right to create a nuisance, public or private."

In *Noonan* v. *City of Albany* (79 N. Y. 476, cited in *Huffmire* v. *Brooklyn*, 162 N. Y. 584, 590), it is said: "A municipal corporation has no greater right than an individual to collect the surface water from the land or streets into artificial channels and discharge it upon the lands of another, nor has it any immunity from legal responsibility for creating or maintaining a nuisance."

In *Block* v. *Maryland* (149 Md. 39), the city was enjoined from the commission of a nuisance notwithstanding it claimed that it was authorized by statute to make a contract and that in the performance of that contract a nuisance was created.

My conclusion is that the Act of 1888, as amended, furnishes no defense to the defendant, and that compliance with permits from the Supervisor of the Harbor acting under the provisions of that Act does not furnish a defense nor relieve it from the effect of a public nuisance resulting from or created by its action.

3. Nuisance

There is no doubt (the amended answer admits) that the defendant for years past, at least since October, 1918, has been dumping large quantities of garbage and refuse at sea, and principally in places designated by the Supervisor of the Harbor of New York. I use the word "principally" because there is evidence that sometimes through accident or the occurring of something unusual, a few scows have dumped their loads nearer to the shore than the appointed

places. There is also evidence uncontradicted, and I find the fact to be that some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area. The general practice continues, more materials were dumped in 1929 than in the preceding year.

As already stated, the conditions on the plaintiff's shores and adjacent waters produced by garbage and other objectionable materials alleged in the bill are proved by uncontradicted evidence. A summary of the facts found may be stated as follows: Along the shores are many summer resorts which serve to furnish recreation, pleasure and rest to people. Their beaches when unaffected by the bad conditions mentioned are pleasure grounds for thousands of visitors. A large number of people living in and doing business in these municipalities are dependent for their livelihood upon the resorts and the preservation of their recreational advantages. The summer resorts along these shores constitute one of the plaintiff's most valuable industries and they suffer frequently in annoyance and expense from deposits of the materials mentioned. The expense of the removal of garbage and other materials falls upon these municipalities and individuals, and this expense amounts annually to large sums. Their disposition as soon as can be after being cast upon the shore is imperative. Foul smelling and repellent as they generally are when first stranded, they become more so as soon as they are subjected to the rays of the sun. They attract swarms of flies. The odors create nausea, and sometimes reach into homes. The deposits interfere with, and until removed frequently prevent, the use and enjoyment of the beaches for the purposes to which the latter are adapted and for the comfortable and enjoyable use of which people visit them. They cause many complaints from and disappointments to visitors to the several resorts for recreation and health, as well as from those whose business depends upon

the attendance of visitors. Many visitors leave the resorts because they cannot use the beaches when littered or secure the surf bathing when the waters adjacent hold garbage and refuse in suspension. The shores below high water mark and the soil under the adjacent waters for at least three nautical miles belong to plaintiff, and their chief value is in the fisheries and the fact that they can and do afford the attractions pertaining to summer resorts which fisheries and attractions are seriously interfered with by the deposits in question.

Along with and at times of the deposits there frequently come broken bottles and pieces of glass and wood pieces with nails therein, and the broken glass and nails are a menace to the bathers in the surf and to persons on the beaches. Severe bodily injuries have resulted from them. The rental value of property has been impaired because of the deposits. The decayed and decaying vegetables and animal matters cast upon the shore is offensive to a high degree to sight and to smell. The deposits are frequent and recurrent.

In *Cleveland* v. *Citizens Gas Light Company* (20 N. J. Eq. 201, 204), it is said: "Any business, however lawful, which causes annoyances that materially interfere with the ordinary comforts of human existence is a nuisance which should be restrained, and small noises and bad odors, even when not injurious to health, may render a dwelling so uncomfortable as to drive from it anyone not compelled by poverty to remain. Unpleasant odors from the very constitution of our nature render us uncomfortable, and when continued or repeated make life uncomfortable. To live comfortably is the chief and most reasonable object of men in acquiring property as the means of attaining it, and any interference with our neighbor in the comfortable enjoyment of life is a wrong which the law will redress."

In *Northwestern Fertilizer* v. *Hyde Park, et al.* (97 U. S. 659), this Court considered a case coming from the Supreme Court of Illinois which involved the question of nuisance. The Company sought to defend because of its

charter rights; but this Court held that the State could give an effectual remedy, saying (p. 667): "It rests upon the fundamental principle that every one shall so use his own as not to wrong or injure another. . . . Pure air and the comfortable enjoyment of property are as much the rights belonging to it as the right of possession and occupancy."

In *Georgia* v. *Tennessee Copper Company* (206 U. S. 230), the State filed its Bill in this Court to enjoin the discharge of noxious gases from the works of defendant in the State of Tennessee. The allegations of the Bill showed that as a result of these gases there was destruction of forest trees, orchards, crops and other injuries. In the course of the opinion it is said: "It hardly is denied and cannot be denied with success that this often is carried by the wind great distances and over great tracts of Georgia land. From the evidence the pollution of the air and the magnitude of that pollution are not open to dispute."

In *Mugler* v. *Kansas* (123 U. S. 623, 673), this Court said: "The ground of equity jurisdiction in cases of purpresture as well as of public nuisance is the ability of courts of equity to give more speedy, effectual and permanent remedy than can be had at law. They can not only prevent nuisances that are threatened and before irreparable mischief results but arrest or abate those in progress and by perpetual injunction protect the public against them in the future. . . . This is a salutary jurisdiction especially where the nuisance affects the health, morals or safety of the community."

It is well established that noxious smells may constitute a nuisance. (*Baltimore, etc. Railroad Co.* v. *Fifth Baptist Church*, 108 U. S. 317.) In *Block* v. *Baltimore*, 149 Md. 29, 51, where the Maryland court considered a case arising out of the transportation of offensive materials by scows from the city to reduction plants, and says (p. 56): "That the conditions complained of constitute an unwholesome danger and offense is obvious."

Replying to the contention that the bill did not contain allegations sufficient to maintain it, that court, after stating the facts, said (p. 51): "It would be a reproach to the law if it afforded the plaintiff no adequate relief from the burdensome and intolerable conditions shown by those facts."

In *Northwestern Fertilizer Company* v. *Hyde Park, supra,* this Court, adopting the findings of the Illinois Court, said: "That a nuisance of so flagrant character exists, as found by the Court below, is not controverted."

And in *Georgia* v. *Tennessee Copper Company, supra,* this Court granted relief against a nuisance caused by the discharge of gases from the defendant's work in Tennessee, and said (p. 238): "It is a fair and reasonable demand on the part of a sovereign that the air of its territory should not be polluted on a great scale by sulphuric acid gas; that the forests on its mountains, be they better or worse and whatever domestic destruction they have suffered, should not be further destroyed or threatened by the acts of persons beyond its control." (See *Missouri* v. *Illinois,* 180 U. S. 208; *Board of Health* v. *Schmidt,* 83 N. J. Eq. 35, 36; *Butterfoss* v. *State Board,* 40 N. J. Eq. 325.)

I conclude that the conditions described in this case amount to a public nuisance, and that the State and communities affected should not be required to tolerate the same.

4. Prescription.

The authorities declare that if the facts develop a public nuisance there can be no prescription. Thus in *Block* v. *Baltimore, supra,* the Maryland court said (p. 59): "But the wrong complained of and disclosed by the evidence amounts to a public nuisance and there can be no prescription"; (citing *Woodyear* v. *Schaefer,* 57 Md. 10).

This Court said in *Northwestern Fertilizer Company* v. *Hyde Park, supra*: "In such cases prescription, whatever

the length of time, has no application. Every day's continuance is a new offense." And in *Missouri* v. *Illinois* (200 U. S. 496, 520), it is said: "The reasons upon which prescription for a public nuisance is denied or may be granted to an individual as against a sovereign power to which he is subject have no application to an independent state."

5. Municipality: Degree of Proof.

But the defendant claims that it is performing governmental functions and entitled to invoke the rule of proof required of plaintiffs in actions between sovereign states. The rule relied upon is stated in *North Dakota* v. *Minnesota* (263 U. S. 364), as follows:

> "In such action by one state against another the burden on the complaining state of sustaining the allegations of its complaint is much greater than that imposed upon a complainant in ordinary suits between private parties. Before this Court can be moved to exercise its extraordinary power under the Constitution to control the conduct of another state at the suit of another the threatened invasion of rights must be of serious magnitude and it must be established by clear and convincing evidence."

There is a qualification of the rule stated in a case by the State against a corporation or person. "Some peculiarity necessarily marks a suit of this kind. If the State has a case at all it is somewhat more certainly entitled to special relief than a private party might be" (*Georgia* v. *Tennessee Copper Company*, 206 U. S. 230, 237). And further in that case this Court said, at page 238: "'This Court has not quite the same freedom to balance the harm that will be done by an injunction against that of which the plaintiff complains that it would have in deciding between two subjects of a single political power."

That the defendant is a political subdivision of the State, created as a convenient agent for exercising certain governmental powers entrusted to it by the State (*Hunter* v. *Pittsburgh*, 207 U. S. 161, 178), or is a department of the state government (*City of Trenton* v. *New Jersey*, 262 U. S. 182, 187) would seem to be settled by these cases.

The fact is that the parent State has left to the defendant the determination of the method to be adopted in carrying out certain duties certainly those with reference to sanitation, and the further fact is that the conditions complained of here are the results of the adoption by the defendant of its own methods. It was not necessary that the defendant dump its garbage at sea except in an emergency. It was put on notice as early as 1907 by a report of distinguished engineers to the Mayor of the City, already referred to, that the method of garbage disposal by dumping it at sea is not the best method. In discussing that method of disposition they said as follows:

> "All the refuse collected could be dumped into the Atlantic Ocean but unfortunately the least harmful material sinks and the foulest floats, so that much of the floating mass will be scattered along the beach through the action of the current and wind. This fouling of the beach creates a nuisance that the public should not be asked to tolerate. The cost of sending the scows so far at sea that there would be no danger of fouling the beaches and the delays and interruptions caused by storms forbid the use of this plan. The dumping of refuse at sea should not be resorted to except in cases of emergency when the burdens of such sea-dumping will be of short duration."

Again in 1921 a Committee appointed by the Mayor of New York, and above referred to, made a report to the Mayor in which they stated as follows:

> "The greatest objection to the present system of disposing of waste material is in connection with the method now being used for getting rid of garbage,

which is both unsanitary and uneconomic. For some years the disposal of garbage not only did not cost the City anything but as a matter of fact returned a small yearly profit. Aside however from the question of cost it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent if they do not openly object to it and there is always the possibility of objection from other communities and from the people claiming that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal."

Prior to this last report the City had been informed by the Supervisor of the Harbor of bad conditions on the shores arising from the dumping at sea. The Mayor requested the right to dump the scows nearer than the area at that time prescribed by the Supervisor. The latter declined the request because of the complaints about the garbage.

The defendant had been satisfactorily using the "reduction" system of garbage disposal when in an "emergency" it was authorized to dispose of it at sea. In the meantime it has erected a number of incinerating plants and plans to erect more. One reason given for the delay in building the needed incinerators is that the defendant was not given the power of condemnation of sites. It has such power now, conferred in 1929, and it is a question whether the defendant, given the right and duty of performing a function that may be called a governmental function but not given the power necessary for its full performance may indefinitely follow a course as heretofore stated to the injury of others and still claim that in such matters it is in the position of the state itself. But if the stricter rule be applied I think the only reasonable conclusion to be reached under all the evidence is that the

objectionable conditions on the beaches and in the adjacent waters complained of in this suit are caused by and due to the action of the defendant in dumping its garbage and refuse into the waters of the ocean as already stated. There has not only been an invasion of serious magnitude of the plaintiff's rights extending through some years but it is continuing and is threatened for an indefinite period.

6. Jurisdiction.

The defendant insists further "that the dumping is done at designated places which are not in the navigable waters of the United States but on the high seas, more than a marine league from the beaches and territorial waters of the state of New Jersey, over which this Court has, in this case, no authority, control or jurisdiction."

There seems to be some inconsistency between the contention of the defendant that the permits of the Supervisor afford protection and yet that the appointed places are not within the navigable waters of the United States.

The authorities cited to this proposition relate to the cases in the District Courts where the question was whether the act complained of was done in the one District or another, the holding being that an action to abate a nuisance must be brought in the District where the nuisance is situated. (*United States* v. *Newark Meadows Improvement Company,* 173 Fed. 426; *McGowan* v. *Columbia River Power Association,* 245 U. S. 352.) In *Mississippi & Missouri Railroad Company* v. *Ward* (2 Black 485), it appeared that Ward sued the defendant, a citizen of Illinois in the District for Iowa, to restrain the continuance of an alleged nuisance arising from the manner of the construction of a bridge over the Mississippi River, the boundary between the two states being the center of the river. The allegation was that the obstruction was on the Illinois side. This Court held that the District Court of Iowa was without jurisdiction, and said (p. 494): "He seeks nothing from

the person of the defendant but seeks to remove a local object because he has sustained certain damages from the object. The District Court has no power over the local obstruction inflicting the injury nor any jurisdiction to make inquiry of the fact whether the damage had been sustained or how much. These facts are beyond the Court's jurisdiction and the inquiry outside of the state."

This Court has, however, a jurisdiction that the District Court did not have. In the present case both the aggrieved and the offending parties are before the Court and subject to its decrees. The property affected is within the United States. (*Massie* v. *Watts*, 6 Cranch 148, 159; *Hart* v. *Sansom*, 110 U. S. 151, 154). In *People* v. *International Nickel Company* (168 App. Div. 245, S. C. 218 N. Y. 644), it was held that fumes from an industrial plant in the State of New Jersey brought by the wind into the State of New York to the injury of citizens of that State did not constitute an indictable nuisance in New York because the offense was not committed in New York. The defendant refers to this case as holding that "the site of this nuisance is in another state." The New York court, however, does suggest that the Supreme Court of the United States would be the forum for trial of such a case.

This Court has taken jurisdiction in just such cases. (*Georgia* v. *Tennessee Copper Company, supra*), where it said (p. 237) that the suit was "by a state for an injury to it in its capacity as quasi-sovereign. In that capacity the state has an interest independent and behind the title of its citizens in all the earth and air within its domains"; and further, "When the states by their union made the forcible abatement of outside nuisances impossible to each they did not there agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground there still remained quasi-sovereign interests and the alternative to force is a suit in this Court."

In *New York* v. *New Jersey* (256 U. S. 296), the plaintiff sought an injunction against the discharge of sewage into

the upper bay, a part of New York harbor, claiming that this discharge constituted a serious injury to health, property and the welfare of the State and citizens of New York. This Court took jurisdiction.

This Court also took jurisdiction in *Missouri* v. *Illinois* (180 U. S. 208), where it was alleged that the turning of Chicago sewage into the drainage canal polluted the Mississippi River and created a nuisance. The controversies were regarded as justiciable by this Court even though finally the bills were dismissed. (See *Wisconsin* v. *Illinois,* 278 U. S. 367; *North Dakota* v. *Minnesota,* 263 U. S. 365; *Pennsylvania* v. *West Virginia,* 262 U. S. 592).

I conclude the Court has jurisdiction.

There is expert testimony that the actual construction period for the building of a 350-ton incinerator would be one year, and that one or more can be completed within that duration of time from the period work starts on them severally. The evidence does not disclose what is a reasonable time for determining the availability of sites and for their acquisition.

My conclusions upon the whole case are that the defendant has created and continues to produce a public nuisance on the beaches and property of the State of New Jersey, as has been hereinbefore found, and that the plaintiff is entitled to relief in accordance with the prayer of the bill; but the defendant should be given a reasonable time within which to put into operation sufficient incinerators to care for its garbage and rubbish. (See *Georgia* v. *Tennessee Copper Company,* supra.)

RECOMMENDATIONS.

My recommendations are:

1. That the Court's decree should declare that the plaintiff is entitled to relief and to an injunction as prayed for, but that before an injunction shall issue a reasonable time

will be accorded defendant within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials such as are now being dumped by defendant at sea.

2. That in as much as the evidence adduced does not disclose what such reasonable time is the case be referred to a Master for findings of fact upon that subject.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

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CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 10, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER UPON RE-REFERENCE.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER UPON RE-REFERENCE.

Pursuant to the order in this cause of May 18, 1931, the parties plaintiff and defendant, by their respective counsel, having appeared before me at public hearings in the City of Washington on June 29 and 30, 1931, and in New York City on July 21, 22, 23 and 24, 1931, and having presented their evidence and having been heard in argument with respect to the findings of fact, conclusions of law and recommendations for a decree which they have respectively requested; and the matter having been finally argued by counsel at Washington on September 17, 1931, and together with printed abstract of the testimony having been submitted, I have reported the testimony thus taken, with exhibits, by filing the same in the office of the Clerk of this Court, with my certificate; and I now submit to the Court the following report, stating in this connection that the parties by their counsel have agreed upon terms for a decree and the same is filed in the office of the Clerk of this Court.

THE QUESTION.

By the decree of May 18, 1931, the cause was referred to me as Special Master to ascertain and report what would be a reasonable time to be accorded the defendant, The City of New York, within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials such as are now being dumped at sea, or to provide other means, to be approved by the decree, for the disposal of such materials.

FINDINGS OF FACT.

(*a*) *General Statement:*

The City of New York is composed of five Boroughs whose population, according to the Census of 1930, is as follows:

Manhattan	1,867,312
Bronx	1,265,258
Brooklyn	2,560,401
Queens	1,079,129
Richmond	158,346
Total	6,930,446

In Manhattan the resident population is shrinking somewhat; in the Bronx, Brooklyn and Queens it is increasing rapidly, and in Richmond moderately.

The garbage and refuse being dumped at sea goes from the Boroughs of Manhattan and the Bronx. There are now three incinerators in Manhattan and none in the Bronx. The three in Manhattan have a rated capacity of 940 tons per day. There are five garbage incinerators in the Borough of Brooklyn with a rated capacity of 1700 tons per day; nine incinerators in the Borough of Queens, with a rated capacity of 1230 tons per day, and five incinerators in Richmond with a rated capacity of 540 tons per day, making a total of 22 incinerators in the City of New York.

(*b*) *Plan for Incerators:*

The 22 incinerators in the four Boroughs mentioned were in operation in December, 1929, when the Department of Sanitation was created, whose jurisdiction extends, among other things, to the disposition of ashes, garbage, rubbish and street sweepings. In December, 1929, the Sanitary Commission, through its Chairman, made a report to the Mayor of the City setting forth a comprehensive program for the construction of 19 additional incinerators and the repair of two others, as being sufficient in number with the old to consume all garbage and rubbish produced by the City until the year 1945.

On May 1, 1931, the Engineering division of the Department of Sanitation filed its report with the Chairman of the Sanitation Commission, stating that:

"In accordance with your recent instructions the Engineering division has made a careful study of the disposal of rubbish and garbage in the City of New York, and herewith presents a comprehensive plan for the construction of incinerators to take care of the combustible refuse which is now a prolific source of discomfort and complaint.

. . . . . .

You will please note that the present project or plan calls for five incinerators in Manhattan, four in the Bronx and five in Queens; the respective costs of construction being estimated at $5,575,000 for Manhattan, $6,250,000 for the Bronx and $5,375,000 for Queens. An examination of the engineer's report will show that the program will take care of the three Boroughs of Manhattan, the Bronx and Queens up to and including the year 1945, the calculations being based on the 1930 Census, with an allowance of the same percentage of increase as has actually taken place in various boroughs during the last ten years. The construction of the plants recommended will enable each one of these three boroughs to destroy all of the rubbish and garbage produced in each one, and will completely do away with the nuisance caused by the distribution of same in land dumps, water-front dumps and at sea."

He recommended that the first letting be for four incinerators, one in Manhattan, two in the Bronx, and one in Queens, and stated that the three sites have already been acquired and the fourth has been certified for purchase by the Commission.

On May 6, 1931, this report was transmitted by the Chairman of the Sanitary Commission to the Mayor of New York as "a report of the Sanitary Commission on the general plans for rubbish and garbage disposal by the process of incineration". There has been some modification of the general plan for 19 incinerators, occasioned by the decision of the Sanitary Commission to erect new incinerators of larger rated capacity than were formerly contemplated. The evidence shows that the defendant's plan for garbage disposal involves the erection of 14 new incinerators, which will take care of the matter of garbage disposal at least until the year 1945, and that such a plan, if consummated, is a proper and effective means for such disposal.

(c) *Amounts of Garbage:*

The quantities of garbage and refuse now being deposited at sea off the New Jersey coast by the City of New York during the greatest dumping at its peak in summer, from June to September, inclusive, of each year and for some years to come if present methods continue, amounts to an approximate average of 3,000 tons per day. To burn this quantity during the summer months mentioned and to provide for future needs, there should be additional incinerating capacity of 3,000 tons per day to be provided by new incinerators, unless by an increase of consumption by existing incinerators, or some temporary expedients for disposal, the need for new incinerator capacity be correspondingly reduced.

The evidence shows that during one week in June, 1931, the three incinerators in Manhattan and the nine in Queens and the three in Richmond (15 in all) taken collectively actually consumed at least 10 per cent more garbage and rubbish than their rated capacity. Eight of these incinera-

tors were operating 24 hours per day; the other seven for different numbers of hours per day. All were operated six days per week. The five largest plants, operating for 24 hours per day and six days per week, consumed more than 20 per cent in excess of their rated capacity. These results were obtained when the relative percentages of garbage to rubbish were 65 to 70 per cent of garbage and 35 to 30 per cent of rubbish, and sometimes a less percentage of garbage. The evidence shows the better ratio to be 80 per cent of garbage and 20 per cent of rubbish, but that this ratio cannot always be maintained because of the weather and other conditions affecting the rubbish.

The three new 750-ton incinerators may reasonably be expected to consume at least 10 per cent in excess of their rated capacity of 2250 tons per day, which would increase their total consumption to 2475 tons per day, and on the basis of actual performance by the large plants operating 24 hours per day and six days per week, the consumption of garbage and rubbish by the new incinerators may be still further increased. It is not, however, considered prudent to conclude that, with the construction and operation of three 750-ton incinerators, the amount of garbage and rubbish just stated would be consumed. The quantity being disposed of at sea should be provided for and provision for its disposal at times of peak production and its possible increase in the future must be made. The proposed fourth new incinerator should be constructed. The four are planned to take care of garbage and rubbish in the localities mentioned until 1945.

(*d*) *Sites:*

The defendant owns three sites, two of them in the Bronx and one in Manhattan, which were acquired in the years 1927, 1928 and 1929. Upon these three sites it is proposed to erect three incinerators with a rated capacity of 750 tons each per day, and to operate them six days per week. Another site in Manhattan has been under negotiation for

some time, which in July, 1931, was reasonably expected to be acquired and the title closed in the fall of that year.

Upon this site another incinerator of 750 tons rated capacity per day is to be erected. As already stated, it is from these two Boroughs, Manhattan and the Bronx, that the garbage now goes to sea.

Other Methods of Disposal.

(1) The plaintiff introduced testimony tending to show that the present conditions would be ended, pending the construction of additional incinerators, by the transportation of garbage further to sea, an estimated distance of 100 miles, in vessels or scows, and there dumping same. Such a procedure would require vessels or scows to be specially equipped with special appliances, if otherwise the plan were feasible. It would run counter to the conclusions of the Supervisor of the Harbor of New York, stated in the original reference in this case, to the effect that experience has shown that such material dumped at sea is liable to be brought back to the shore at whatever distance it is dumped. The evidence shows that it would require four or five days for scows to make such a trip and return, and also fails to show that such a plan is practicable.

(2) The plaintiff urges that, pending the completion of proposed new incinerators of sufficient capacity to dispose of all garbage and rubbish which, under existing conditions, is dumped at sea, the defendant can and should resort to certain methods or expedients such as (a) a better separation of garbage and rubbish and ashes by householders; (b) the improvement of the relative proportions of garbage and rubbish in the incinerators, and where necessary, the use of some coal as additional fuel; (c) the transfer of excess garbage from one Borough to another where incineration may be had; (d) seven-day operation of all incinerators "when necessary during the peak months of summer"; (e) the dumping of garbage mixed

with ashes or sand in land fills. The defendant takes issue with these contentions.

(a) *Separation*—The defendant has ordinances and regulations requiring the separation of garbage and other substances into four separate classes—garbage, refuse, ashes, and liquid waste, and the use of separate receptacles for them. The evidence shows that in tenement house sections in the Boroughs of Manhattan and the Bronx compliance with these regulations and ordinances is difficult to secure. Many thousands of notices of the requirements of these regulations (printed in four languages) are annually distributed to the householders and others concerned. A force of from 60 to 70 men is kept employed in looking after this matter; and in 1929, when a special "drive" was made to enforce the ordinances and regulations by a considerable addition to the regularly-employed force, the result was a large increase in convictions and fines for violations. The evidence does not show that reasonable efforts to enforce these ordinances are not being made by the defendant.

(b) *Proportions*—The burning of a mixed refuse containing 80 per cent of garbage and 20 per cent of rubbish is the upper limit for operation with satisfactory temperatures and without the use of some coal. The use of this ratio is difficult to maintain. The weather affects the rubbish, and other conditions may reduce its heat-producing qualities. The defendant has two types of plants, the Delcarie and the Sterling, and they are not designed for using coal, though in emergencies some coal may be and has been used. In the Sterling type, being a fire-brick lined furnace, there is a tendency when using coal to get "ballaning", that is, an amalgamation of the fire-brick with the ash, which at various temperatures tends to fuse and to run into any interstices in the brick or between the brick, and when it becomes slightly cold to form a mass the removal of which tends to break up the face of the brick and reduce the life of the furnace. The Delcarie type is a higher-temperature furnace, and because of its peculiar construction is liable,

in using coal, to produce more smoke. The use of some coal in emergencies has been made, but in opening the doors and piling coal on the grates or over a fire already started, rushes of cold air in the combustion chamber and a reduction of temperature occur, which make for disagreeable smoke and the chance of complaint because of gases emitted from the stacks. As already stated, the defendant's largest plant, operating 24 hours per day and six days per week, consumed more than their rated capacity of garbage and rubbish while using certain relative proportions; if brought to the use of the better relative proportion of 80 per cent of garbage and 20 per cent of rubbish, their consumption would be increased.

(c) *Transfer from one plant to another*—The evidence shows that garbage and rubbish from the Boroughs of Manhattan and the Bronx can be transferred to some plants that are not operating on full time of 24 hours per day. The latter are disposing of materials in the localities they were designed to serve, and their full rated capacities are not used in doing so. Difficulties to be met in the making of such transfers may be summarized as the distances involved; the method of transfer; inadequate storage space and disproportionate expense. In times of stress of weather, some garbage otherwise going to sea has been taken to Brooklyn plants. The Sanitary Commission applied to the Board of Estimate and Apportionment for and obtained its leave to modify the contract of the Brooklyn Ash Removal Company to permit excess garbage from other Boroughs to be disposed of in the Brooklyn incinerators. Under this resolution, it is possible to transfer some of the garbage now being dumped at sea to Brooklyn incinerators to the extent of their capacity. The collection of garbage and rubbish for transfer from Manhattan and the Bronx to other places will involve some night collections of garbage in residential districts, and the noises and annoyances incident thereto, besides the transportation of the materials for long distances. There would be an addi-

tional operating force necessary to operate the plants in Queens and Richmond not now running 24-hours per day, and extra drivers for trucks, estimated on a yearly basis to approximate $400,000 in additional costs. The evidence shows that when the three 750-ton plants are in operation any quantities of material they cannot consume that would, under present conditions, be sent to sea could be disposed of by inter-plant adjustments of burning to the limits of practicability, and that such a plan would be a reasonable step to take.

(d) As to the practicability of seven-day per week operation, the evidence is uncertain; in some instances there has been a burning of the residuum left over from operation on Saturday.

(e) *Fills*—Assuming the existence of appropriate places, it may not be said that garbage and rubbish mixed with ashes and used as a fill is an impracticable expedient for their disposal during short peak periods, if thereby the dumping at sea can be avoided. The materials here referred to do not include some things that the original report herein shows were being dumped at sea, but refers to what is generally known as "hog-feeding garbage" and rubbish and ashes. The evidence shows that ashes mixed with a small percentage of garbage taken from Manhattan are being disposed of in part at Rikers Island, part being sent to sea. The defendant has been engaged for some time in filling Rikers Island and the work, nearly completed now, will be finished in about nine months from August 1, 1931. Some other place or places must be made available for ashes and rubbish in lieu of Rikers Island. A plan to use East Island was abandoned because of objection from near-by communities; but to make it available for garbage and rubbish it is shown by the evidence to be necessary to provide much equipment. One of the witnesses stated that the construction of the necessary docks, sea-wall, unloading machinery and other equipment that would be required to make such an island available for the disposal of ashes

and rubbish, would require at least as long a time as the construction of incinerators, which would be the ultimate and final scheme; and Mr. Fuller, another witness, stated that he believed that the effort required to get the land-fill method into practice would be such as to make that particular step not commensurate with what the attempt would call for, in comparison with the program for incineration.

There are some small areas which the defendant has acquired for street purposes which, in the outlying portions of the City may be "filled in". Rubbish may be used in land fills. As an emergency measure, the dumping of garbage with ashes and rubbish has been done in some other cities. The method is not to be recommended, except as an emergency for a limited period.

There are emergencies of one kind or another that make it necessary to transfer garbage from one plant to another in the City of New York. These are temporary expedients. The suggested methods of disposal other than by incineration are likewise temporary. The better method is to erect incinerators sufficient to accomplish the desired end.

TIME FOR CONSTRUCTION.

The plaintiff introduced witnesses who qualified as experts and testified upon the question of the time in which the proposed incinerators could be built, and the defendant introduced expert testimony on the same question. The conclusions stated by Mr. Samuel Greeley, a witness called by the plaintiff, and by Mr. George W. Fuller, a witness called by the defendant, fairly represent the contentions of the respective parties on the question of a reasonable time. Both of these witnesses are eminent engineers with wide experience and well qualified as experts to speak upon the questions submitted to them.

As to the reasonable length of time within which additional incinerators may be installed in New York City,

their conclusions do not differ widely. Mr. Greeley having stated his estimate of the time to be 20 months, said:

"In detail, I am setting that period of 20 months as beginning with the time when sites are determined to be available; that is, when the negotiations have been sufficiently advanced so that their acquisition is considered certain, and I have allowed 2 months for the preparation of general plans and specifications, 1½ months for the taking of bids, 1 month for the awarding of a contract, 4 months for the preparation of detailed plans and specifications, 10 months for construction and 1½ months for test and acceptance. I have in mind that there would be an overlapping of some of those items. Judging from my experience in actual construction and supervision of construction that is an entirely practical and reasonable limit of time. . . . I have taken into consideration the fact that these are municipal plants and I base it upon that fact."

Mr. Fuller testified as follows:

"After the sites are made usable I think, from my experience, it would require for a minimum 21½ months before the plants could be constructed and tested and accepted by the City.

"The first item of the details of that summary is the making of borings on the sites for the incinerators, and I put down here a minimum period of 2 weeks, an average period of 3 weeks.

"The next item would be the design of the superstructure and the submission of plans for the superstructure to the Arts Commission for approval. Those can be done at once, and I have made an estimate of 6 weeks for a minimum and 8 weeks for an average period.

"The next item would be the application to the Board of Estimate and Apportionment for approval of the plans and specifications, and also of the estimate of cost of structures, and the action thereon by the Board. By that I mean the fundamental form in which they may be now placed would have to be made definitely available for the construction of the respective incinerators on the desig-

nated sites corresponding to the plans and specifications. I put down that period required for the action of the Board as 2 weeks for a minimum and 3 weeks for an average period. So that before the sanction of the Board can be obtained for the definite allocation of funds, that is, the sub-appropriation of funds for each respective plan, the period of 10 weeks would occur for a minimum in my opinion, and a period of 14 weeks under average practice. I think those periods which I designated for the 3 respective steps are fairly comparable with Mr. Greeley's estimate of 2 months for the preparation of plans and specifications.

"The next step involves approval as to the form of contract by the Corporation Counsel and the completion of the printing of the same after the receipt of bids for printing. I put that period as 4 weeks under minimum conditions and 6 weeks for average practice. Then there would be a period of advertising and taking of bids, which I put as 4 weeks under minimum conditions and a month under average conditions. A month I thought was a fair period.

"These steps then, after definite provision of funds by the Board of Estimate and Apportionment, and the approval of form of contract and of plans and specifications by the Board of Estimate and Apportionment, those 2 steps would take 8 weeks for a minimum and 10 weeks for an average. That would be comparable to Mr. Greeley's estimate of 1½ months as the time for taking bids.

"The next step would be the award of a contract and the approval of sureties, which I have put down as a minimum of 6 weeks and an average period of 8 weeks. Mr. Greeley gave one month for that.

"In regard to the next step, I have put down 20 weeks for the preparation of the detailed plans by the contractor and their approval by the City authorities, 20 weeks for a minimum and 24 weeks for an average. Mr. Greeley gave 4 months, which is about 17 weeks. I might clarify that statement of mine as to 20 weeks somewhat, from the standpoint that, as I understand it, the approval of the plans and specifications submitted by the contractor would have to be secured from different City authorities; that is, after the bids are received and certain drawings submitted with

the bids, then the contractor to whom the award is made would have to develop certain details. Under the New York City practice—or, I should say under New York State practice—there are certain things that have to be separated, and besides getting the approval of the City building department for the plumbing, for instance, and the gas fitting, that has to be done under state law under separate contract for sizable projects, projects over $25,000, and also steam heating has to be put under separate contract, and in accordance with the prevailing practice, although I think it is not a state law, the Bureau of Electricity in the Department of Water, Gas and Electricity, has to approve all electrical plans and specifications, and they practically request that separate contracts be provided for electrical equipment. So I say, in addition to getting approval of the building department, there are necessarily these other approvals, and that in part, I think, makes plain my 20 weeks as against 17 weeks or 4 months, dealt with by Mr. Greeley; and it also is a reason why I am figuring a difference between minimum and average periods, which is 24 weeks, according to my estimate.

"For the next step I have placed a construction period at 43 weeks for a minimum, and 52 weeks under average conditions. Those correspond to 10 months for a minimum and 12 months for average conditions.

"As to tests and acceptances, I put that 6 weeks for a minimum and 8 weeks on an average, as comparable to Mr. Greeley's estimate of 1½ months. I think I gave you the total number of weeks for the minimum as 93 weeks or 21½ months."

Both witnesses conceded that the time for tests and acceptances could be deferred and the incinerators be put in operation without formal acceptance until some later period, under suitable provisions to that effect in the contract.

Upon the estimates of the two witnesses with reference to time for preparation of plans and specifications it is to be observed that the engineer member of the Sanitary

Commission, testifying in July, 1931, stated that the plans and specifications were then nearly completed.

The nearness of the estimates of these witnesses as to the time within which the three proposed incinerators should be constructed on the sites presently owned is also reflected in the requests by counsel for the respective parties for findings by the Special Master on that subject. There is a wider margin of difference between counsel in the time necessary to put in operation an incinerator on a site not actually acquired in July, 1931, by the defendant.

In considering the question of a reasonable time within which the necessary incinerators could be put into operation there are several important elements:

1. *Availability of funds*—The facts show that appropriations have already been provided for incinerators in various localities. These were provided for smaller plants than are now deemed efficient, and larger plants are proposed to take their places. Therefore it is necessary to take a number of small amounts and add them together to make the larger sum necessary for the present program. Application must accordingly be made to the Board of Estimate and Apportionment to allocate said sums to this particular project. This Board acting favorably, the money is available, and there is no suggestion that the Board will act unfavorably.

2. The defendant is a municipality and may not be expected to act as expeditiously as an individual would. Action by its duly constituted Boards is necessary. It has its zoning regulations, and these are subject to alteration. The statute provides methods for acquiring property by condemnation.

It was appositely said in another case before this Court upon the question of time:

"It should not fix what could be considered to be the shortest conceivable time under highly favorable conditions of work, but should have regard for what may fairly be accepted under average conditions without unjustified delay."

The evidence shows that under existing conditions labor can be secured readily and that this is a favorable time for work of construction. The estimates made by the witnesses do not take into consideration the time that may be lost on account of strikes or unforeseen conditions that may arise beyond the control of the City or the contractors.

CONCLUSIONS.

Upon all the evidence, I conclude that the additional incinerators which the defendant the City of New York has planned to construct in the Boroughs of Manhattan and the Bronx, with a rated capacity of 750 tons each per day, should be ready for operation on or before June 1, 1933, and that until June 1, 1933, is a reasonable time to be allowed the defendant within which to put into effect and operation the necessary incinerators to enable it to dispose of its garbage and materials such as are now being dumped at sea, and to cease disposing of the same by dumping them at sea. This conclusion makes allowance for ordinary contingencies, but not for strikes or contingencies beyond the control of the defendant or its contractors.

The grave consequences that might follow the stoppage of all dumping at sea of such materials before effectual provision is made for their disposal otherwise are mentioned in the letters of the defendant's representatives or agents to the Supervisor of the Port of New York in 1918, when asking leave to dump at sea, and referred to in the former report in this cause.

A reduction in the amount of garbage and rubbish, being dumped at sea, can be made by the use of some of the methods already mentioned, pending the completion of the needed incinerators.

To make suitable provision for the contingencies mentioned, it would be just to the parties for the Court to retain jurisdiction of the case for the purpose of such modification as, upon due application and notice, the Court may determine to be proper.

Recommendations.

Pursuant to the decree of re-reference, it is recommended:

(1) That the decree make the injunction mentioned in the opinion and decree of the Court in this case effective from and after June 1, 1933, and require the defendant and its agents or employees to cease the dumping of any garbage or refuse into the ocean or waters off the coast of plaintiff the State of New Jersey, on and after June 1, 1933.

(2) That the defendant be required to file with the Clerk of this Court on the first days of April and October of each year, beginning April, 1932, a report to this Court setting forth the progress made in the construction of the incinerators in the Boroughs of Manhattan and the Bronx, and the amount of garbage and refuse dumped at sea during the period of the report.

(3) That either party to this cause, on due notice to the other, may apply at the foot of the decree for any modification thereof, and this Court retain jurisdiction for the purpose of any order or decree it may deem proper in the premises.

No recommendation is made as to costs.

Inasmuch as the parties to this cause, by their respective solicitors, have entered into a consent decree which has been filed in the office of the Clerk of this Court, I deem it unnecessary to a full compliance with the Court's decree of re-reference to do more than refer to the consent decree, which amply embodies the foregoing recommendations and includes some other matters.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

FILE COPY

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

State of New Jersey, *Plaintiff*,
vs.
The City of New York, *Defendant*.

No. 10, Original

REPORT OF THE SPECIAL MASTER UPON 2ND RE-REFERENCE UNDER ORDER OF MAY 29, 1933.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933.

State of New Jersey, *Plaintiff*,
vs.
The City of New York, *Defendant*. } No. 12, Original

REPORT OF THE SPECIAL MASTER UPON 2ND RE-REFERENCE UNDER ORDER OF MAY 29, 1933.

Pursuant to the order in this cause of May 29, 1933, the parties plaintiff and defendant, by their respective counsel, having appeared before me at public hearings held in the City of New York, July 10th and 11th and 17th, and September 12th, 1933; at Asbury Park, New Jersey, on September 25th and 26th, and again in New York City on October 2nd, 1933, I have reported the testimony thus taken, with exhibits, by filing the same in the office of the Clerk of this Court with my certificate.

Counsel were invited to argue the questions involved, but one of them expressing a preference to present brief and request for finding, that course was adopted. Counsel for both sides have furnished memorandum briefs with request for findings and conclusions.

QUESTIONS.

The decree of the Court entered May 29, 1933, appointed me as Special Master to take evidence that might be offered by the respective parties, and also such as the Master might deem necessary to show:

1. What shall have been done by defendant up to September 15, 1933, and the time reasonably required to enable it to comply with the decree (namely, the decree entered December 7, 1931);

2. The amount that shall have been expended subsequent to June 1, 1933, by the State of New Jersey and its political subdivisions to prevent or lessen the defilement or pollution of the waters, shores or beaches within that State, and the damages respectively sustained by them as the result of defendant's failure to comply with the decree.

GENERAL STATEMENT.

(a) On September 22, 1931, the Sanitary Commission of New York City addressed a communication to the Board of Estimate and Apportionment, enclosing three copies of the proposed form of contract and specifications to be used in advertising for bids for the erection of four destructor plants, and requested approval of the same. They also requested in this communication "sub-authorizations of existing corporate stock funds" for the erection of four destructor plants on city-owned land, one in Manhattan, two in the Bronx, and a fourth on land to be acquired in the Borough of Queens. The estimated cost of these incinerators was $1,000,000 each, with an additional $400,000 for the land in Queens, making an aggregate estimate of $4,400,000. The communication pointed out that "The available corporate stock authorizations for incinerators and their present balances" included certain designated

authorizations and suggested that the sub-authorizations be made from them in designated amounts. This communication of September 22, 1931, transmitting the proposed contracts, plans and specifications to the Board of Estimate and Apportionment for approval and the authorization of funds appeared on the Board's calendar at its meeting held September 25, 1931, and was referred to that Board's committee of the whole and to its secretary for report.

At the meeting of the committee of the whole held on October 6, 1931, this matter was adjourned for three weeks to the meeting of October 27, 1931, when it was again adjourned two weeks to the meeting of November 10, 1931. During these postponements the engineers in the office of the secretary of the Board of Estimate and Apportionment were considering the plans and specifications and were in frequent conference and consultation with members of the staff of the Sanitary Commission concerning details of the plans and specifications. They made suggestions which finally resulted in the transmission by the Sanitary Commission under date of November 14, 1931, to the Board of Estimate and Apportionment of revised plans and specifications. This communication was referred to the committee of the whole and the secretary of the Board on November 20, 1931.

At a meeting of the committee of the whole of the Board held December 1, 1931, the said requests of the Sanitary Commission of September 22 and November 14, 1931, were laid over until December 8, 1931, and on the latter date were again laid over for one week, at which time the committee of the whole voted to restore the matter to the Board calendar and recommended approval of the terms and conditions of the contract, plans and specifications.

At the meeting of the Board of Estimate and Apportionment December 18, 1931, a large delegation claiming to be residents and tax payers appeared and through their

spokesman entered objections to the proposed construction of the incinerator in the Bronx, to be located at Cromwell and River Avenue and 150th Street. At their request the Mayor put the matter over until the next regular meeting, namely, January 15, 1932, and at that meeting the Board of Estimate and Apportionment approved the request of the Sanitary Commission to make a change in the Use District map, so as to alter from a business to an unrestricted district part of the incinerator site at West 215th and 216th Streets not then included within an unrestricted zone.

By January 15th, 1932, practically all of the other necessary procedure required to be observed by charter prescription in respect of contracts before advertising for bids, such, for instance, as the approval as to form by the Corporation Counsel of the proposed contract forms and specifications, and the advertisement for the solicitation of competitive bids, had been carried out. Authority to proceed with the solicitation of bids on the four incinerator contracts was all that remained to be had. The Chairman of the Sanitary Commission was requested by the Mayor to submit a statement showing how the funds necessary for these contracts would be expended, in what proportions and over what period of time. In his reply the Chairman transmitted to the Mayor estimates that during the first ten months the payments would average about $350,000 a month on account of all four contracts, and in addition personal service charges against the work would run about $50,000 per year.

At the meeting of the Board of Estimate and Apportionment held on January 22, 1932, the matter of the approval of the contracts was again postponed for two weeks, to February 5th, and on that date it was again put over for two weeks, to February 19, 1932, and postponements were later made until February 26th and then until March 4, 1932, when the matter of the approval of the terms and

conditions of the four contracts was laid over for one week and referred to a new committee known as the Ways and Means Committee, created by the Board "to report on all matters requiring the present or future expenditure of money."

On March 9, 1932, the Sanitary Commission addressed a letter to the Mayor of the City urging that action be taken in the matter of the approval of the contracts and called his attention to the provision in them for completion of the four incinerators on or before March 31, 1933, in order that the plants could be tested and be in operation before June 1, 1933, the date fixed in the decree of the Supreme Court of the United States for the cessation of dumping at sea. This communication from the Commission was presented to the Board of Estimate and Apportionment by the Mayor at its meeting on March 18th, and then the matter was laid over for two weeks, to April 1, 1932, and was then laid over pending action by the Ways and Means Committee. From that date the Board did not carry on its calendar any matters requiring the expenditure of funds of a nature such as this item, and they were all carried in the Committee on Ways and Means.

The item again appeared in the Board calendar of June 17, 1932. A communication of the last named date addressed by the chairman of the Sanitary Commission to the chairman of the Board of Estimate and Apportionment was presented, submitting a number of corrections that should be made in the contracts and specifications for the incinerating plants, and on June 17, 1932, the Board of Estimate and Apportionment approved the terms and conditions of the contracts, specifications and drawings as revised in accordance with the letter of that date from the Sanitary Commission, but with the proviso that the bids be taken with three bases of performance, namely, in 200 working days, 250 working days and 300 working days, with the right to award on any of these three bases.

Among the changes in the contracts as authorized was the omission therefrom of the proposed incinerator at Crowell Avenue in the Bronx. The bids as authorized called for the erection of three incinerators, and the bids were to be subject to reconsideration by the Board before approval of the contracts. The changes adopted by the Board required some delay in the necessary re-printing of the "bid book" or parts of it, which printing was promptly done.

Advertisements for bids for the three incinerators commenced July 15, 1932, and named August 10 as the date for the receipt of bids. The city furnished with the contracts and specifications what is called a "typical plan", but each bidder was permitted to design a size of building that would fit his particular furnace or plant, and had to submit certain general plans.

The invitation to the bidders to bid on more than one contract and the city's offer to give the successful bidders two or three, and the proposal inviting bids on the different bases of completion within 200, 250 or 300 working days, resulted in the receipt of a total of 188 bids from 8 different bidders.

On August 7, 1932, the Sanitary Commission summoned two of the bidders to appear for examination in accordance with the terms of the proposal. They appeared on August 18th and were examined at length.

On August 18th and subsequent dates letters were sent to other bidders and at different dates some of these appeared for examination as to their bids.

On September 12, 1932, the Sanitary Commission adopted the report of its engineer member, made after a full examination of the several bids, and recommended its adoption by the Board of Estimate and Apportionment. This report recommended that the contracts for the three incinerators be awarded to the Superior Incinerator Company of Texas and the L. E. Myers Company. The bids of

these bidders on the three incinerators taken separately aggregated $2,225,000, but they proposed that if the contracts for the three incinerators were awarded to them they would make a deduction reducing their bid for the three plants to $2,136,000, making an average of $712,000 for each of the three plants.

On September 12, 1932, this report of the engineer member of the Sanitary Commission was adopted and, together with the bids received, the plans of bidders and copies of the stenographic examination of four of the bidders, and some other papers, were transmitted to the chairman of the Board of Estimate and Apportionment and delivered at the office of the secretary of the Board on that date. It appeared on the calendar of the Board of Estimate and Apportionment at its meeting September 30th, 1932.

During the week beginning September 12, 1932, a conference had been held in the Mayor's office, attended by the chairman of the Sanitary Commission, the engineer member thereof and others, at which time the acting Mayor directed the chairman of the Sanitary Commission to proceed with the examination of the other four bidders in the same manner as the Commission had examined the four bidders above referred to.

Under date of September 27, 1932, copies of the examination of the second set of four bidders were transmitted to the secretary of the Board of Estimate and Apportionment and to the acting Mayor direct.

On October 11, 1932, the communication dated September 12th from the Sanitary Commission was on the calendar of the committee of the whole, but the report of the engineers of the office of the secretary of the Board not being ready, it was laid over for two weeks, to October 25, 1932. At the meeting of the committee of the whole held on October 25, 1932, the discussion was confined almost entirely to the plants proposed to be erected on Northern Boulevard at 226th Street, in the Douglaston area of the Borough of

Queens, being one of the three incinerators above mentioned. The committee of the whole voted to refer back to the Sanitary Commission for further consideration and report the matter of this 750-ton incinerator in the Douglaston area. Consideration of the contracts for the other two incinerators was deferred to the meeting of November 1st, 1932.

On November 1, 1932, at the meeting of the committee of the whole of the Board of Estimate and Apportionment, after discussion of the two remaining contracts for incinerators, one in Manhattan and one in the Bronx, the committee of the whole, on motion of the acting Mayor, voted to restore the matter to the calendar of the Board of Estimate and Apportionment. This recommendation of the committee of the whole appeared on the calendar of the Board of Estimate and Apportionment at its meeting of November 11, 1932, when it was laid over one week and referred to the Comptroller for report.

On November 8, 1932, the Comptroller having reported in the meantime, the Board of Estimate and Apportionment adopted a resolution authorizing the Sanitary Commission to award contracts for the erection of a destructor plant at 215th Street in Manhattan at a bid price of $696,395, and a contract for the erection of a destructor plant at Zerega Avenue, the Bronx, at the bid price of $713,140, the total amount for both plants being $1,409,535. The contracts were on the basis of performance in 200 consecutive working days but did not include the plumbing and heating of the incinerators.

Under date of November 23, 1932, the Sanitary Commission in the regular procedure followed in the awarding of city contracts notified the two successful bidders of the award, directed them to submit their sureties to the Comptroller, and called their attention to the procedure to be followed in so submitting sureties. The Comptroller was

also advised of the award, and on November 23, 1932, the contracts were executed by the contractors.

On December 20, 1932, the Comptroller approved the sureties that had been submitted, and on this date the Sanitary Commission sent to the contractors a copy of the executed contracts, and also sent a copy of each contract to the Comptroller to be "registered" by him, as provided by law. He affixed his certificate to each of them on December 23, 1932.

The contracts called for the completion of the two incinerators with a capacity of 750 tons each in 200 working days, but did not include heating and plumbing. These items are, by the laws of the state of New York, required to be awarded by separate contract.

The contracts required the contractors to prepare and submit to the Sanitary Commission plans and specifications for the plumbing and heating work to suit the building and the furnaces they were installing.

Between March 17, 1933, and April 11, 1933, the Sanitary Commission received from the contractors plans and specifications and tracings, and on April 11, 1933, the mechanical engineer of the Sanitary Commission completed an estimate of the cost of the heating and plumbing work for each plant, based on the specifications and plans received from the contractors.

On April 12, 1933, the Commission applied to the Mayor, in accordance with the rules of the Board of Estimate and Apportionment, asking his permission to present to said Board two contracts, one of them for plumbing work and one for heating work for the two plants, at an estimated cost of $40,000 for plumbing and $20,000 for heating. This permission was granted on April 24, 1933.

Between the last named dates, April 12th and 24th, the Municipal Assembly of the City of New York adopted local law No. 5, effective April 13, 1933, whereby the Sanitary

Commission was abolished and a single commissioner called "Commissioner of Sanitation," was made the head of the Department of Sanitation.

On April 25, 1933, the Commissioner of Sanitation transmitted to the chairman of the Board of Estimate and Apportionment copies of each of the proposed contracts, plans and specifications for plumbing and heating of the two incinerators, and urged that action be taken with all convenient speed.

On May 19, 1933, the Board of Estimate and Apportionment adopted a resolution approving the terms and conditions of these contracts for plumbing and heating.

It appears that the legislature of New York by an act effective May 5, 1933, amending the labor law of the State requires all contracts for public work in the State to have annexed to them a schedule of wages to be paid workmen, laborers and mechanics on such public work, and making it in New York the duty of the Comptroller to arrive at such schedules and supply them to the various departments concerned.

On May 25, 1933, the Department of Sanitation called to the Comptroller's attention the proposed contracts for heating and plumbing, and asked for the schedule of wages to be paid, in accordance with said Act. There followed considerable correspondence between these branches on the subject. No contract for the heating and plumbing had been made up to October 2, 1933.

Construction of the two incinerators was commenced March 21, 1933. On October 2, 1933, the incinerator for Manhattan was 34 per cent complete, and the incinerator for the Bronx was 20 per cent complete.

The chief engineer of the Department of Sanitation was produced as a witness by defendant on July 17, 1933, and again on October 2, 1933. Between those dates he had been made Commissioner of Sanitation in succession to Mr.

George McAneny, who had been appointed Comptroller. This officer expressed the opinion that at that time, in July, the two incinerators could not be completed within the contract time. He stated that the operation of the two incinerators would reduce the necessity of dumping at sea by a large amount but not completely, and that the disposal of the excess of garbage at sea could be suspended by defendant if it uses some other means of disposal. He then outlined a schedule he had prepared for disposing of the excess, which included an additional incinerator in either Manhattan or the Bronx, and an extra one in Brooklyn and refuse burners in Manhattan, and also included a substitute for Rikers Island, which had been used for some years by defendant for the disposal of refuse and ashes and some garbage. Rikers Island was then practically filled and another place in Jamaica Bay called West Island was being considered.

The president of one of the contracting companies was called as a witness on motion of the plaintiff and agreed that the incinerators under construction were about 34 per cent and 20 per cent completed, and that work on the plants was being delayed by the absence of work on plumbing and heating, the contracts for which had not yet been let.

FINANCES.

The plaintiff introduced as a witness the chief accountant of the department of finance. He explained the method of financing improvements such as the building of incinerators to be by funds obtained from the sale of corporate stock notes which are redeemable by the issuance of long-term bonds known as corporate stock or serial bonds, and that these can be sold under sealed bids after advertisement. He said that the corporate stock note is simply a

"forerunner" to enable the city to borrow as it needs to borrow, without borrowing millions of money in advance of actual needs, and that when the Board of Estimate and Apportionment had authorized an improvement and payments thereon, it did not mean that the money was available unless the Comptroller were able to sell corporate notes or to have a long-term bond sale. He testified that from early in March, 1931, the defendant had not been able to have a long-term bond sale and that on that date, March 4, 1931, it had a bond sale of $100,000, which was to take up corporate stock notes already issued, but leaves $9,000,000 of corporate stock notes outstanding, while there were contract liabilities besides of $189,000,000, which contract liabilities had been registered on authorizations duly made by the Board of Estimate and Apportionment. There was a large amount of corporate stock notes outstanding for the independent subway, and on the 4th of May, 1931, a sale was held of $52,000,000 of four-year bonds, and because of that fact the "bankers" agreed to bid for them under competitive bidding and sealed bids. This sale in May, 1931, and the one in March, 1931, were, according to this witness, the last sales of 4-year bonds or long-term bonds.

In January, 1932, the legislature restricted the issue of corporate stock notes by the city to $200,000,000, but the new notes could be issued for a period not exceeding five years. Prior to that time the corporate notes were issued for one year with the right of renewal. The "bankers" took $100,000,000 of these notes to take up $76,700,000 of outstanding notes, and paid $23,300,000 in cash.

There were approximately $94,000,000 of corporate notes outstanding in June, 1933.

In 1931 the defendant spent on subway construction about $70,000,000, in 1932 about $80,000,000, and in 1933 the witness estimated the expenditures for the subway were $6,000,000.

The aggregate budgets for several years, less the amount of debt service within such budgets, for all departmental purposes were as follows:

1930	$394,363,870.90
1931	419,783,466.58
1932	424,655,959.67
1933	358,667,962.88

The witness stated that he had never known of payments for such work as that of building incinerators being paid out of the budgets, that such payment would be contrary to the provisions of the city charter, and that since the sale of the corporate stock notes issued as above stated under the last Act of the Legislature, the defendant had been unable to sell any more bonds or stock notes.

With reference to the incinerator contracts the witness stated that every voucher that had come from the contractors for these two incinerators had been paid, and that the city had "a little money left of our corporate stock borrowings to pay whatever else comes along for the next couple of months." These contracts provide for progress payments.

In April, 1933, the "bankers" refused any further loans. The city cannot sell any kind of securities at less than par, and its 6 per cent corporate stock were in July, as stated by this witness, on the market at a discount. The city has not offered to sell corporate stock notes for incinerator purposes alone.

On October 2, 1933, the Special Master called as a witness Mr. George McAneny, who at that time was Comptroller of the city of New York. He had been Commissioner of Sanitation under the re-organization made in April, 1933, already mentioned, whereby the Sanitary Com-

mission of three members was abolished and the Department of Sanitation was created. He stated that the testimony of the chief accountant of the Department of Finance had covered rather thoroughly the subject of funds for building incinerators and that there had been no sales of corporate stock for a long time. He further stated that a program had been developed under his instruction looking to a 100 per cent incineration, but that how long it would take to execute that program depended upon the dates on which funds were provided, and that the city was unable in October, and had been for a considerable length of time, to borrow money for these purposes; that he could not say at what time dumping at sea could be stopped under present conditions. He said that in view of the uncertainty as to the city funds his plan included a request for moneys from the Reconstruction Finance Corporation (R. F. C.), that would enable the city to make a start on the plan for incineration, which is "coupled with the broad subject of our needs for sewage disposal as well." He expressed the opinion that the application to the R. F. C. would go forward within the next two or three weeks.

EXPENDITURES.

At a hearing held in Asbury Park, New Jersey, September 25 and 26, 1933, a number of witnesses were introduced by plaintiff, who testified relative to the expense of removing deposits on the beaches between June 1st and September 15th. There was also introduced a book of 64 photographs identified as having been taken on and along the beaches, and showing deposits thereon between the dates of June 9th and September 1st. The witness was employed by the State to examine beaches and make observations of

their condition, and began work on July 24th. On that day the beaches of Highland, Monmouth and Seagirt showed no garbage; North Long Branch, Asbury Park, Deal and Allenhurst had very little garbage. At Chadwick photograph No. 51 showed a number of crates, cans, oil cans, electric light bulbs, radio tubes, bottles, and a small amount of garbage amongst the refuse—meaning by "garbage" decayed fruit and vegetables.

On July 25th at Mantoloking Beach, picture No. 56, there were on the beach dead animals, cans, bottles, wooden floor blocks, banana stems, electric light bulbs and orange peelings.

On July 27th two pictures were taken at Point Pleasant showing bottles, electric light bulbs and rotted fruit, such as oranges, grape fruit, melon rinds and vegetables.

On August 5th at Bradley Beach there were orange peelings, rotted melons and vegetables.

On August 9th the beaches from Highland down to Seaside Park were clear, and on August 11th the beaches from Highland Beach to Manasquan were clean, and a small amount of garbage consisting of orange and lemon skins, grape fruit and dead chickens were in the undertow about to be washed up at Point Pleasant, Lavallette and Seaside Park.

On August 12th at Mantoloking Beach as far as the eye could see there was garbage strewn.

From August 14th to 18th, inclusive, the beaches from Seaside Park to Highland Park were clean.

On August 23rd, on the beaches at Ocean Grove, Bradley Beach, Avon, Delmar, there were bottles, cans, driftwood, decayed fruit and vegetables, and the beaches at Manasquan, Point Pleasant, Bayhead, Mantoloking, Lavallette and Seaside Park had a large amount of garbage, fruits and vegetables, besides driftwood, broken furniture, cases,

bottles and electric light bulbs in windrows along the beach. At Mantoloking, along with the refuse on the beach there was a dead fowl and a dead dog.

On August 24th at Highland Beach there were some electric light bulbs and a small amount of orange skins and parts of grape fruit. At Seabright some driftwood, cans and bottles. At Asbury Park the tide had taken out a lot of refuse and garbage brought in the preceding day.

At Bradley Beach the picture showed garbage and refuse thrown back of the bulkhead below the boardwalk.

At Delmar and Avon the beaches were fairly clean, except that where they extended back from the water there remained what had been brought up the previous day in the way of garbage and driftwood and bottles.

At Spring Lake the beaches were clean to within 25 feet of the boardwalk, but from that point to the boardwalk and beyond in the street were bottles, cans, electric light bulbs and some fruit, orange skins, grape fruit and melon rinds.

Pictures 1 to 9, taken at Point Pleasant, show conditions on August 24th, the date of a heavy storm.

On August 25th pictures taken at Bradley Beach and Avon showed the refuse and garbage along with driftwood brought up by the storm.

On August 29th pictures No. 30 and 31 were taken at Spring Lake, showing a great number of bottles, electric light bulbs, radio tubes, jugs and driftwood. Picture 32 shows a pile of refuse, including cans and bottles, decayed fruit and vegetables with driftwood, parts of furniture, garbage and rotted fruit mixed with it.

Another witness testified that at Bayhead Beach there were, between June 15th and September 15th accumulations on the beach of various kinds, fruits and vegetables and dead animals, and that accumulations of garbage and

refuse occurred at least three times and amounted each time, he estimated, to three or four tons.

In rebuttal the defendant offered evidence tending to show that some of the materials found upon the beach did not come from the dumps. Its witnesses testified to a regular practice of salvaging bottles at the places where garbage and refuse are dumped into the scows to be transported to sea, and that this work is done by a contractor who is under contract with the city of New York to reclaim materials going into the scows. He stated that there is picked each week, on an average, 50 to 60 barrels of bottles at every dump.

The defendant adduced testimony to show that no material was dumped at sea on designated days in June, July and August, but the same accumulated material was dumped on other days.

Commencing July 17, 1933, the defendant was granted permission to dump and did dump garbage and refuse at a place ten miles further out at sea than the general location of dumping on prior occasions. This more distant location is about 35 miles distant from the New Jersey shore.

There was testimony relative to the drift and sinking of garbage dumped in August, when on two occasions an officer of the defendant made observations at the 35-mile location. This testimony was to the effect that the drift was not toward the New Jersey shore.

The defendant showed that during the months of June, July and August, and until September 15th, the number of vessels passing the Jersey coast was 4459, taken from the records of the Monmouth Beach Coast Guard station. In this number there was included boats of all character and description.

The expenditures for removing garbage and refuse from New Jersey beaches from June 1st to September 15th, 1933, are as follows:

Municipality	*Cost*
Sea Girt	$134.25
Ocean Grove	8.10
Avon	66.28
Spring Lake	262.95
Seaside Park	510.00
Seaside Heights	164.00
Manasquan	215.34
Bradley Beach	35.00
Point Pleasant Beach	764.87
	$2,160.79

It was stated by counsel for the plaintiff that a number of other witnesses appearing could not show the expenditures because of the method in which the accounts had been kept.

Mr. Goodrich, who was chief engineer of the Department of Sanitation of the City of New York, under appointment by Mr. McAneny when the latter was Commissioner of Sanitation, and who when he testified on October 2nd, 1933, had become Commissioner of Sanitation, was asked by defendant's counsel whether, upon the construction of the two incinerators now being built the city of New York would be able to suspend the dumping of garbage and refuse and other materials at sea, and he replied: "Not from the results of the construction of those two incinerators, no." He was further asked:

"Q. Upon the completion of the incinerators is it your intention positively to discontinue the dumping of material at sea, other than ashes?

"A. I don't see how it can be done.

"Q. When will the city of New York be able to suspend the dumping of garbage and refuse at sea?

"A. After the completion of additional facilities." (Record page 590-591.)

Further, on page 592, this witness testified:

"Q. Now, you say that to prevent dumping at sea you will have to do two things: build additional incinerators and increase the capacity of others existing, or rebuild some of them. Is that right?

"A. Correct.

"Q. And up to the present time is there anything that would justify an expression of opinion on your part as to when that could be accomplished?

"A. If we can get these funds from the R. F. C. it could be done inside of a year.

"Q. Inside of a year?

"A. Yes.

"Q. But if the Government don't loan the money you have no answer to make have you?

"A. Exactly."

During one of the hearings before the Special Master it was given as an excuse for the absence of an expected witness that he, with other city officials, was discussing with the Governor of the State the question of a special session of the legislature to give authority to the city to levy special taxes for stated purposes. It does not appear that funds were sought for incinerators at the proposed extra session nor at the last session of the legislature. The charter of the city of New York as amended provides that corporate stock may be issued for various specified purposes, among them, "for the erection and equipment when first erected of buildings for garbage and rubbish disposal plants and dumps."

CONCLUSIONS.

Upon consideration of all of the evidence, the briefs and requests for findings by counsel, my conclusions are stated as follows:

1. Up to September 15, 1933, the defendant had authorized two contracts, and on that date there were under construction under these two contracts two incinerators, one of them located in Manhattan, the other in the Bronx. The two incinerators had a rated capacity of 750 tons of garbage per day each. The contracts for their construction were executed November 23, 1932, and called for their completion within 200 working days, the price being $696,395 and $713,140, respectively, an aggregate of $1,409,535, except that the necessary plumbing and heating for the two incinerators was not included in the terms of the two contracts mentioned, but were excepted therefrom. The law requires that contracts for plumbing and heating shall be awarded separately from the construction contracts.

On September 15, 1933, and on October 2, 1933, the contracts for plumbing and heating in the incinerators had not been awarded.

The work required by the two contracts for incinerators was 34 per cent complete as to one and 20 per cent complete as to the other on October 2, 1933. The Commissioner of Sanitation, an engineer, estimated that the two plants would be ready for operation on April 21 and June 30, 1934, respectively. The representative of the contractor estimated an earlier completion, but both of these estimates are subject to contingencies such as weather, non-working days and others, besides the delay in awarding the contract for the completion of the work on plumbing and heating.

The completion of the two incinerators under construction, with a capacity of 750 tons each, will not enable the defendant to suspend dumping of garbage at sea. This can only be done, as stated by the Commissioner of Sanitation, "after the completion of other facilities."

2. The question of "the time reasonably required to enable defendant to comply with the decree" does not admit of a definite answer under the evidence adduced. The defendant introduced evidence in 1931 which showed that 21½ months was a reasonable time within which incinerators could be built after the sites were ready, and this period included the preliminaries leading to the authorization of contracts under that execution. The parties by counsel then agreed, and filed a proposed decree to the effect that June 1, 1933, was a reasonable time within which the defendant could comply with the former decree relative to a cessation of dumping garbage at sea.

The contention by defendant's counsel before the Special Master is that the delay in performance within the time set in the former decree "has been due entirely to unforeseen, unpredictable and insolvable problems arising solely from the inability of defendant to sell its corporate stock securities wherewith to secure moneys necessary to defray the expenses for the construction of incinerators." The plaintiff contends that no sincere effort to comply with the decree appears.

The evidence shows much delay in authorizing the contracts, as above shown, an inability on the part of the defendant as late as October 2, 1933, to dispose of corporate stock notes or long-term bonds, and that such inability existed for a considerable period, extending back into 1932. It further shows that projects such as the building of incinerators by the city are required to be financed primarily from the sale of corporate stock notes, which in turn are converted into serial or long-term bonds.

In the report of the Special Master upon re-reference of this cause in 1931 there is a statement that the funds for the erection of four proposed incinerators were then available. This statement was based upon the testimony of a member of the Sanitary Commission, who in answer to a question stated that the money was available. (Record of hearings, 1931, Vol. 6, pages 687-689.)

Under the testimony adduced at this hearing the above statement is in error and the sale of authorized corporate stock notes or bonds is necessary.

If the defendant were required to show, within a stated time before the date fixed for the completion of the two incinerators, what the result of its application to the Reconstruction Finance Corporation, or the result of any application to the legislature had been upon the question of funds, the time reasonably necessary to enable defendant to complete the work or comply with the decree could be more satisfactorily determined.

3. The municipal subdivisions of plaintiff have expended, between June 1, 1933, and September 15, 1933, to prevent or lessen the pollution of the waters, shores or beaches of New Jersey, resulting from defendant's failure to comply with the decree, the sum of $2,160.79.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

FILE COPY

APR 4 1

CHARLES ELMORE

IN THE

Supreme Court of the United States

October Term, 1930.

No. [redacted]iginal 13 10

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

EXCEPTIONS OF THE DEFENDANT TO THE REPORT OF THE SPECIAL MASTER AND HIS RECOMMENDATIONS FOR DECREE AND TO HIS FAILURE TO FIND AS REQUESTED BY DEFENDANT.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
THOMAS W. A. CROWE,
of Counsel.

(22036) M. B. Brown Printing & Binding Co., 37-41 Chambers St., N. Y.

IN THE

Supreme Court of the United States

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

EXCEPTIONS OF THE DEFENDANT TO THE REPORT OF THE SPECIAL MASTER AND HIS RECOMMENDATIONS FOR DECREE AND TO HIS FAILURE TO FIND AS REQUESTED BY DEFENDANT.

Now comes The City of New York, the defendant above named in the above entitled suit and objects and excepts to the report of Hon. Edward A. Campbell, the Special Master, herein filed in the office of the Clerk of this Court on the 20th day of March, 1931, in the following particulars, to wit:

A. That this Court has jurisdiction to grant the relief demanded in the Bill of Complaint because among other things the suit is one to protect quasi sovereign rights of the plaintiff, because the defendant is before the Court, and the property affected is within the United States.

1. To so much of the conclusion, or purported conclusion, of law, set forth under the heading "Parties and

Jurisdiction" (Report of Special Master, p. 9), as concludes that the case presents a justiciable controversy over which this Court has jurisdiction.

1a. To so much of the finding of fact or conclusion of law, or both, set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 58), as finds that in the present case, both the aggrieved and the offending parties are subject to its (this Court's) decrees.

2. To so much of the finding of fact or conclusion of law, or both, set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 58) as finds that the property affected is within the United States.

3. To so much of the conclusions of law set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 59) as concludes that this Court has jurisdiction.

4. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 49) that The City of New York has not dumped garbage and refuse in the ocean for many years in any appreciable quantities within a marine league (three nautical miles) of the shores of the State of New Jersey, except on rare occasions either when necessary to preserve life where a scow was in danger of foundering or when there is some unauthorized action upon the part of the individuals employed by the contractors in charge of the scows or towboats.

5. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 50) that the territorial waters of the plaintiff do not extend more than one marine league or three nautical miles from the Atlantic Coast shore line of said State of New Jersey at low water mark.

6. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 51) that the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid are not within the territorial limits of the plaintiff.

7. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 53) that the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid, are not within the navigable waters of the United States.

8. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusions of Law 3 and 4) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12 and 22 miles, respectively, from the Atlantic shore of the State of New Jersey, or much more than one marine league from said shore and its waters, was not and is not a dumping thereof in the navigable waters of the United States.

9. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 5) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Lightship and from the New Jersey shore as stated in Exception No. 8, was not and is not a dumping thereof in the territorial waters of the State of New Jersey.

10. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 6) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Lightship and from the New Jersey shore as stated

in Exception No. 8, was a dumping thereof on and into the high seas.

11. To the failure and refusal of the Special Master to conclude as a matter of law, as requested by the defendant (Proposed Conclusion of Law 15) that by reason of the dumping in the Atlantic Ocean by the defendant of garbage and refuse at the places, in the manner and under the conditions aforesaid, no justiciable controversy between the plaintiff and the defendant is presented over which the Supreme Court of the United States has authority, jurisdiction or control under Article III, Section 2 of the Constitution of the United States or any other article of said Constitution or under any statute of the United States or under the Common Law.

B. That garbage and refuse in large quantities dumped by the defendant in the Atlantic Ocean more than a marine league from the shores of the waters of the plaintiff is driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance, to the great injury of the plaintiff's rights and property.

12. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement, and the mass moves at times westward and northward or towards the shores of New Jersey or Long Island according to the direction and velocity of the wind.

13. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that the mass spreads out on the surface of the water gradually breaking up into smaller areas and moving for indefinite periods with the wind, some of the materials being on the surface and some in suspension.

14. To so much of Finding of Fact (16) (Report of Special Master, p. 26) as finds that some of the lobster fishermen have followed the floating garbage from the place where it is dumped by the defendant in the ocean to where it went ashore on New Jersey's beaches.

15. To so much of Finding of Fact (16) (Report of Special Master, p. 26) as finds that about 25% of the self-addressed, stamped postal cards deposited in sealed bottles dropped in garbage in the ocean immediately after the dumping by New York City scows came back to the parties depositing same by mail from persons along the New Jersey and Long Island shores and from further north.

16. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that the deposits of garbage and refuse produce unhealthful conditions interfering with and frequently preventing the comfort and enjoyable use of the beaches and sea, it being dangerous to leave children unattended on the beach while the deposits are there because of things they may pick up, some of the same being unmentionable; that broken glass and nails in pieces of wood have been the cause of severe wounds to persons on the beach or in bathing, and that it is a menace to health and tends to injure business and property values and rental values.

17. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that during June, July and August, 1929, there were in Asbury Park, a considerable increase over the preceding year of cases of external otitis which is a swelling or inflammation of the ear canal, and of cases of infection of the middle ear requiring the drum to be opened, and of sinus affected cases resulting from bathing in the ocean, and that one or more of the coast guard incurred a skin infection from the water which gave them considerable trouble.

18. To so much of the Finding of Fact (16)—Appearance and Movement—(Report of Special Master, p. 27) as finds that large parts of these floating and submerged areas of garbage and refuse, dumped by the defendant are driven and carried by winds and water to and upon the shores of the plaintiff, and constitute the objectionable materials thereon and in the adjacent water, hereinbefore described:

19. To so much of the Finding of Fact, or Conclusion of Law, or both, set forth under the heading—Some Questions of Law—1. Trespass (Report of Special Master, p. 41) as finds that large areas of garbage and refuse floating upon or held in suspension by the water, which have been dumped by defendant's scows, are driven and carried by wind and water to and upon the shores of plaintiff and other portions or areas thereof are held for indefinite periods in the waters above soil owned by plaintiff and do great injury to fishing and bathing in such waters.

20. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—3. Nuisance" (Report of Special Master, pp. 50-51) as finds that the conditions on plaintiff's shores and adjacent waters produced by garbage and other objectionable materials alleged in the bill are proved by uncontradicted evidence. A summary of the facts found may be stated as follows: Along the shores are many summer resorts and their beaches, and when unaffected by the bad conditions mentioned are pleasure grounds for thousands of visitors. * * * The deposits interfere with, and until removed frequently prevent, the use and enjoyment of the beaches for the purposes to which the latter are adapted and for the comfortable and enjoyable use of which people visit them. * * * Many visitors leave the resorts because they cannot use the beaches when littered or secure the surf bathing when the waters adjacent hold garbage and refuse in suspension and the chief value of the shores below high water mark and the soil under

the adjacent waters for at least three nautical miles is in the fisheries and the fact that they can and do afford the attractions pertaining to summer resorts, which fisheries and attractions are seriously interfered with by the deposits in question.

21. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—3. Nuisance" (Report of Special Master, p. 53) as finds that conditions described in this case amount to a public nuisance, and that the State and communities affected should not be required to tolerate the same.

22. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—5. Municipality—Decree of Proof" (Report of Special Master, pp. 56-57) as finds that even if the stricter rule of evidence be applied, I think the only reasonable conclusion to be reached under all the evidence is that the objectionable conditions on the beaches and in the adjacent waters complained of in this suit are caused by and due to the action of the defendant in dumping its garbage and refuse into the waters of the ocean as already stated and that there has not only been an invasion of serious magnitude of the plaintiff's rights extending through some years but it is continuing and is threatened for an indefinite period.

23. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—6. Jurisdiction" (Report of Special Master, p. 59) as finds that the defendant has created and continues to produce a public nuisance on the beaches and property of the State of New Jersey and that the plaintiff is entitled to relief in accordance with the prayer of the bill.

24. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 46) that six different inspections made by an official

from the Office of the United States Supervisor of the Harbo of New York in February, March and April, 1929, of garbag dumpings by New York City scows at the 8 and 12 mil dumping points where the drift of the garbage was followe for periods of from 12 to 24 hours each did not reveal a singl occasion when the garbage reached any shore.

25. To the failure and refusal of the Special Master t find as requested by the defendant (Proposed Finding o Fact 48) that when dumped, the lighter portion of the gar bage floats while the heavier portion sinks, but that gradu ally some of that which at first floated, sinks, leaving a very considerably smaller portion floating at the end of 24 hours than at the time of dumping.

26. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 52) that garbage and refuse dumped by the defendant into the ocean as aforesaid, has not found its way in any substantial quantities into the territorial waters or onto the beaches of the plaintiff.

27. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 54) that the dumping of garbage and refuse at sea as aforesaid by defendant, has not caused substantial injury to the navigation of the ocean by the plaintiff or its citizens or visitors.

28. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 55) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to bathing or bathing rights or property connected therewith on the part of the plaintiff or any of its citizens or visitors.

29. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of

Fact 56) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to fishing or fishing rights or property used in connection therewith of plaintiff or its citizens or visitors.

30. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 57) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not substantially injured or menaced and does not substantially injure or menace the health, safety, comfort or welfare of the State of New Jersey or any of its citizens or visitors thereto.

31. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 58) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to the commerce of the plaintiff or its citizens.

32. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 59a) that the prevailing winds along the coast of the plaintiff range from southwest to northwest—offshore winds.

33. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 60) that the dumping of garbage and refuse at sea by defendant as aforesaid, has not caused and does not cause any substantial depreciation to the value of the plaintiff's property or that of its citizens, has not retarded and does not retard the economic development of plaintiff's territory, and that of its municipalities in any substantial manner and does not impose in any substantial manner upon plaintiff's municipalities and inhabitants a constant or considerable expense in removing defendant's garbage and refuse from public and private property.

34. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 65) that the plaintiff failed to produce on the trial of this action, any scientific or expert evidence as to the effect of ocean currents or tides upon the movement of objects dumped into the ocean at from 10 to 22 miles from the New Jersey shore, and floating partially or wholly submerged in the ocean.

35. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 7) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not obstructed and does not obstruct or impede the navigation of the waters of the United States or of the State of New Jersey.

36. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 8) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not injured or destroyed and does not injure or destroy the bathing or fishing rights or property therein of the plaintiff or its citizens or visitors thereto.

37. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 9) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not regulated or destroyed and does not regulate or destroy the commerce of the State of New Jersey and/or its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States or of any statute of the United States.

38. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant

(Proposed Conclusion of Law 10) that the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse, has not taken and does not take any property or right of the plaintiff and/or its citizens, without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

39. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 13) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not deprived and does not deprive the plaintiff and/or any of its citizens of the natural advantages of its or their position along the seashore contrary to the sovereign rights of said State as a member of the Union or of any of such rights.

40. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 16) that the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid, of garbage and refuse, has not been and is not an unreasonable disposition of the same as a matter of law.

41. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 18) that the plaintiff herein must prove its claims and case against the defendant herein by clear and convincing evidence.

42. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 19) that the plaintiff herein failed to prove by clear and convincing evidence that any substantial portion of the garbage and refuse which found its way into the waters of the State of New Jersey or onto

its shores or beaches was that which was dumped into the Atlantic Ocean by the defendant.

43. To the failure and refusal of the Special Master to conclude as a matter of law, as requested by the defendant (Proposed Conclusion of Law 17) that the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid, of garbage and refuse has not created and does not create a public nuisance as a matter of law in respect to the plaintiff and/or its citizens or visitors or a public nuisance which seriously impairs the usefulness, wholesomeness and safety of the waters, beaches and shore-front facilities of the plaintiff or its citizens or damages the property of said plaintiff, its municipalities and citizens or their health, safety and welfare.

C. That compliance by the defendant with the provisions of the Act of Congress of June 29, 1888 (29 stat. 209) as amended and the permits to dump garbage in the Atlantic Ocean at a distance in excess of one marine league from the shores of New Jersey issued by the Supervisor of the Harbor of New York in accordance with said Act, do not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

44. To so much of the Finding of Fact set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 45) as finds that the Act (29 Stat. 209, as amended) contemplated that the Supervisor prescribe certain limits, but there is no evidence in this case as to what limits were prescribed.

45. To so much of the Finding of Fact on Conclusion of Law or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 47) as finds, or purports to find, that although the defendant dumps its garbage under permits issued by the Supervisor of the

Harbor of New York at points in excess of one marine league from the shore of New Jersey, it is difficult to understand how that fact affords any defense in this case.

46. To so much of the Conclusion of Law set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 47) as concludes that the authority of the Federal Government does not extend beyond the requirements of navigation.

47. To so much of the Conclusion of Law set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 48) as concludes that the powers which the Supervisor has under the statute and the effect to be given the permits authorized to be issued are to be strictly construed because of the effect of the dumping upon the rights of others.

48. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 48) as concludes that the fact that the defendant is a municipal corporation does not afford immunity from the results of its own action.

49. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 49) as concludes that the Act of 1888, as amended, furnishes no defense to the defendant and that compliance with permits from the Supervisor of the Harbor acting under the provisions of that Act does not furnish a defense nor relieve it from the effect of a public nuisance resulting from or created by its action.

50. To the failure and refusal of the Special Master to conclude as a matter of law as requested by defendant (Proposed Conclusion of Law 14) that the dumping in the Atlan-

tic Ocean by the defendant as aforesaid of garbage and refuse under permit from, and supervision of, the Government of the United States through its Supervisor of the Harbor of New York and in accordance with the provisions of Title 33, Chapter 9, Sections 441-451 inclusive, U. S. Code (approved June 30, 1926) and preceding statutes on which founded, is a compliance with each and every regulation and statute of the United States relating to navigation, commerce and/or any other subject over which Congress has exercised the jurisdiction of the United States.

D. That such garbage and refuse as reaches the plaintiff's shores from the dumpings by coastwise and other vessels and from other sources is negligible in comparison with that dumped by defendant and reaching plaintiff's shores and constitutes no defense to plaintiff's complaint.

51. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 31.) as finds, or purports to find, that there is evidence that only some coastwise and other vessels discharge garbage refuse into the ocean.

52. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 31) as finds, or purports to find, that a witness introduced by the defendant made an estimate to the effect that there were only twenty vessels a day going and coming from southern ports to New York.

53. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 35) as finds or concludes that testimony that some vessels discharge garbage and refuse after clearing from New York, falls short of establishing a custom by other vessels.

54. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 36) as finds, or purports to find, that whatever garbage and refuse reaches the plaintiff's shores from coastwise and other vessels and other causes and other dumpings than those of the defendant are negligible in comparison with that constantly being dumped by the defendant and frequently carried by winds and waves from the dumping places to and upon plaintiff's shores as hereinbefore stated.

55. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 27) that the scows of private contractors, having no connection with the City of New York, containing "cellar dirt," i. e., debris from buildings that have been torn down consisting of joists, timbers, laths, plaster, etc., of a very light kind have for years been dumped and are being dumped into the Atlantic Ocean under permit from the Supervisor of the Harbor of New York at a point about 4 miles southeast of Scotland Lightship.

56. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 33) that cargoes of condemned foodstuffs, vegetables, fruits, etc.) are also dumped at sea under permit from the Supervisor of the Harbor of New York at a point 25 miles from the New Jersey shore.

57. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 34) that Brooklyn Navy Yard scows containing refuse and garbage also dumped at sea at the regular dumping points at which New York City garbage is dumped.

58. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 35) that the Supervisor of the Harbor of New York in his report for 1929, stated that it is probable that a great deal

of garbage is dumped both outside and inside the harbor entrance by the enormous tonnage passing in and out of New York Harbor and also that the local floating equipment throws more or less garbage overboard.

59. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 36) that the records of the Collector of the Port of New York show that in 1928-1929 the following was the number of vessels clearing from or entering such port from points south thereof for periods of two months at a time; months of December 1928 and January 1929, foreign and coastwise vessels entering, 1,227; clearing, 1,173. Months of July and August, 1929, foreign and coastwise vessels entering, 1,105; clearing, 1,192.

60. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 37) that the sea lane or route for coastwise ships going to and coming from points south of New York is about 2½ to 3 miles over the New Jersey coast at Seabright, Monmouth Beach and Asbury Park; 5 miles at Sea Girt and 8 miles at Barnegat Lighthouse.

61. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 38) that practically all freight and passenger ships leaving and entering New York Harbor (especially those leaving) dump more or less garbage and refuse in such sea lane.

62. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 39) that many freight and passenger lines and ships feed their crews in port and none of their garbage or refuse is removed by the City or disposed of by the ship while in port, but such accumulations consisting of bottles, tin cans, electric light bulbs, pieces of meat, fruit, other food waste, wood,

mattresses, pillows, shoes, old clothes, boxes, barrels, crates, etc., are dumped after passing Scotland Lightship.

63. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 40) that passenger and freight ships often anchor in great numbers during a fog for 24 hours or more outside of the harbor and dump garbage accumulated during that period into the sea where they are anchored.

64. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 41) that the holds of cargo boats are usually swept in port after the removal of the cargo and before reloading; that such sweepings and also sweepings from the forecastle are placed on deck for dumping in addition to garbage and refuse and all are dumped in said sea lane for coastwise ships shortly after passing Scotland Lightship on the way south.

65. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 42) that fruit, vegetables, poultry and other supplies delivered to the ships in port to feed passengers and crews, are usually packed in crates, barrels and boxes which have the names on them of New York dealers from whom they are bought, and such crates, boxes and barrels, partly broken up, are on most ships piled on deck and dumped with other refuse in said sea lane shortly after passing Scotland Lightship on the way south.

66. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 45) that insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park on the Atlantic Coast of New Jersey has been and is being discharged into the Atlantic Ocean within a short distance from the beaches of each of those cities.

67. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 64) that from 1896 to 1918, except for a few months in 1903 (1906) no New York City garbage and only a part of its refuse was dumped at sea, yet during that period a large amount of garbage and refuse was washed up into the New Jersey waters and onto its Atlantic shore front beaches.

68. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 66) that the deposit in substantial quantities in the Atlantic Ocean at points varying from 2½ to 8 miles from the Atlantic shore front of the plaintiff State commencing with the minimum distance at Sandy Hook and extending to Barnegat Lighthouse where the maximum distance existed, of garbage, refuse and cellar dirt (material taken from demolished buildings in New York City) by steamships and other floating equipment and by scows of private contractors, of the same kind and character as that deposited in said ocean as aforesaid by defendant much further away from said shore front of the plaintiff, and the deposit of garbage and refuse in said ocean by the United States (Brooklyn) Navy Yard authorities at the points where defendant dumped and the deposit in said ocean less than ½ mile from plaintiff's said shore front of insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park, makes it impossible to determine as a fact, whether garbage and refuse and other offensive matter in substantial quantities is deposited by defendant in the waters of the State of New Jersey or on its beaches.

69. To the failure and refusal of the Special Master to conclude as a matter of law as requested by defendant (Proposed Conclusion of Law 20) that by reason of the deposit in substantial quantities of garbage, refuse, cellar dirt and unsanitary sewage in the Atlantic Ocean by agencies

other than defendant, at points much nearer the coast of plaintiff or no further therefrom than where the deposits of garbage and refuse are made by defendant in said ocean as aforesaid, it is impossible to determine whether such garbage and refuse deposited by defendant in said ocean off the coast of the plaintiff, reaches its waters and beaches in substantial quantities, and therefore defendant is not liable to the plaintiff for the injuries alleged to have been suffered by the plaintiff, its citizens and visitors.

E. Particular exceptions to the Special Master's report and to his failure to find facts and make Conclusions of Law as requested by defendant and in support of its contention that on all of the evidence, a case for equitable relief in favor of the plaintiff, was not made out.

70. To so much of Finding of Fact (14)—Supervisor's Reports—(Report of the Special Master, p. 23) and of Finding of Fact (17)—Incinerators—(Report of Special Master, p. 29) as finds that the first incinerating plant was put in operation by the City of New York in February, 1924.

71. To so much of Finding of Fact (17)—Incinerators—(Report of the Special Master, p. 30) as finds that the evidence does not show the cause of the apparent delay by the defendant in adopting and putting into operation the incinerating system, and that it was in 1924, some five years after the defendant began dumping at sea, that its first incinerator was put into operation, and during the next succeeding five years other were built. That those constructed and in use fall far short of taking care of the garbage and refuse situation.

72. To so much of Finding of Fact, or Conclusion of Law, or both, (17)—Incinerators—(Report of Special Master, p. 30) as finds that the delay of the defendant in adopting a proper method of disposal has been unreasonably long.

73. To the failure or refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 17) that three incineration plants were built in the Borough of Manhattan as a result of an appropriation of $5,000,000 made in July, 1921, the first being completed in February, 1924, the second in November, 1925, and the third on October 1, 1928, the cost of each incinerator being about $1,000,000, exclusive of the cost of the land on which built.

74. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 19) that the commencement of building operations on a fourth site was halted by injunction duly obtained in the Supreme Court of the State of New York.

75. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 20) that in the Borough of Brooklyn there are two incinerators, each with the capacity of 100 tons a day and three with a capacity of 500 tons a day each, all now in operation, built by a contractor under a contract to dispose of all material that may be delivered, and since December 1, 1929, no garbage from that borough has been dumped at sea.

76. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 21) that in the Borough of Queens there are now nine incinerators operating with an average daily garbage and refuse consumption of from 100 to 270 tons and that borough has never dumped any of its garbage at sea.

77. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 22) that in the Borough of Richmond there are now three incinerators in operation and none of the garbage from that borough has been or is now being dumped at sea.

78. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 24) that approximately only 27 per cent. of the garbage collected in the City of New York is dumped at sea, the greatest proportion of which comes from the Borough of The Bronx, and such amount will be continually reduced.

79. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 63) that the dumping in the ocean by the defendant more than a marine league from the New Jersey coast at points 8, 12 and 20 miles southeast of Scotland Lightship designated by the United States Supervisor of the Harbor of New York and under conditions imposed by him of about 27 per cent. of the garbage collected by said City is not in fact an unreasonable disposition of its total garbage collections, pending the carrying out of its plans for the installation of additional incinerators.

80. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 61) that the size, summer population, property investments and assessed value of property of practically all of the New Jersey communities and municipalities located along the Atlantic Ocean shore front from Highlands to Seaside Park has increased greatly during the period from 1919 to 1929, during which the City of New York has been dumping a portion of its garbage and refuse into the Atlantic Ocean as aforesaid.

81. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 62) that, although much more garbage and refuse has been dumped at sea by the City of New York during the summer months than during those of winter, the summer population of, and visitors to, all of the New Jersey Atlantic shore front communities and municipalities claimed by plaintiff to have been injured, is and are many times greater than in winter.

82. To so much of the Finding of Fact set forth in the report of the Special Master under the heading "Some Issues of Fact," page 34, as finds that as to the Long Branch sewer the evidence consists only of a plan of the sewage system and some evidence that complaints were at one time made to the Department of Health, which investigated the same, and that the matters were satisfactorily adjusted.

83. To so much of the Finding of Fact set forth in the report of the Special Master under the heading "Some Conclusions of Law," page 50, as finds that some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents, and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area, and that the general practice continues, more materials being dumped in 1929 than in the preceding year.

84. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 3), that by Chapter 378 of the Laws of 1897 of the State of New York, known as The Greater New York Charter, various municipalities of the State of New York were united and consolidated into the City of New York, which was thereby divided into five boroughs, known, respectively, as the boroughs of Manhattan, The Bronx, Brooklyn, Queens and Richmond.

85. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Findings of Fact 5 and 6), that by said Chapter 378 of the Laws of 1897 of the State of New York, a Department of Street Cleaning was created in the municipal government of said city, with jurisdiction over the removal and disposition, as often as the public health required, of ashes, refuse, street sweepings and garbage collected in said city, but that by Chapter 466 of the Laws of 1901, jurisdiction over the removal and dis-

position of said substances collected in the Boroughs of Queens and Richmond was transferred to the presidents of said boroughs.

86. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 7), that by Local Law No. 13 of 1929, of the City of New York (duly adopted by the Municipal Assembly of said city in accordance with the provisions of Chapter 363 of the Laws of 1924 of the State of New York) in force from and after December 1, 1929, amending and supplementing said provisions of said Greater New York Charter, as amended, a Department of Sanitation was created, to which was transferred jurisdiction over the removal and disposition of ashes, refuse, street sweepings and garbage collected in all of said five boroughs of said city.

87. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 15) that, on collection, this garbage is taken to docks or dumping boards on the waterfront of said city and is then dumped into city-owned barges, which are designated by the initials of the departmental name and letters of the alphabet, and these are towed to sea by tugboats chartered from, and in charge of, contractors, and the contents are there dumped.

88. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 1), that the defendant, The City of New York, is a municipal corporation and a political subdivision of the State of New York, administering governmental functions in the localities described in Sections 1 and 2 of Chapter 378 of the Laws of 1897 of the State of New York, as amended by Chapter 466 of the Laws of 1901 of said State, and subdivided into five boroughs therein described.

89. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant

(Proposed Conclusion of Law 2), that the Department of Street Cleaning and the Presidents of the Boroughs of Queens and Richmond of the City of New York, for many years prior to and until December 1, 1929, and thereafter the Department of Sanitation thereof, had jurisdiction in said city over the removal and disposition, as often as the public health required, of ashes, refuse, street sweepings and garbage in said city.

90. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 12), that the dumping in the Atlantic Ocean by the defendant, as aforesaid, of garbage and refuse has not violated, and does not violate, Public Laws of New Jersey, 1882, page 155 (3. Compiled Statutes of New Jersey "Pilots", Sec. 47, p. 3958), nor any other statute of the State of New Jersey.

91. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 21), that the plaintiff has failed to prove facts sufficient to constitute a cause of action in equity for the relief demanded in the complaint or for any relief whatever in equity.

92. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 22), that the defendant is entitled to a dismissal of the complaint herein, with costs to the defendant.

F. Recommendations for Decree.

The defendant also objects and excepts to the recommendations for a decree made by the Special Master in the following particulars:

93. To subdivision No. 1 (Report of Special Master, pp. 59-60) in its entirety.

94. To subdivision No. 2 (Report of Special Master, p. 60) in its entirety.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel of The City of New York,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
THOMAS W. A. CROWE,
Of Counsel.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

12

No. 12, ORIGINAL.

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

To the Supreme Court of the United States:

Pursuant to the Decree of this Court in the above entitled cause, dated December 7, 1931, the defendant, The City of New York, respectfully presents the following report to this Honorable Court:

1. The following is a statement of the progress made in the matter of the construction of incinerator plants for the final disposition of garbage and rubbish in The City of New York during the period from April 1, 1932, to September 30, 1932.

The Board of Estimate and Apportionment of The City of New York at a meeting duly held on June 17, 1932, adopted a resolution (Cal. No. 34) approving of the terms and conditions of three contracts each for the erection of one Destructor Plant complete (excepting plumbing and heating work), for the incineration of garbage and rubbish at three of the sites referred to in the second paragraph of the first report of this Defendant dated March

31, 1932, to wit, a site located in the Borough of Manhattan, one of the sites located in the Borough of The Bronx and the site located in the Borough of Queens.

This resolution of said Board directed that the costs of such contracts be charged against Corporate Stock of The City of New York in the manner in such cases provided by its Charter.

Advertisement for sealed bids on said three contracts commenced in the City Record, published by The City of New York, July 13, 1932, and bids therefor were received and publicly opened on August 10, 1932.

In all, a total of one hundred and eighty-eight (188) bids were received and nineteen (19) separate sets of plans were submitted by bidders.

It was first necessary for the engineering staff of the Department of Sanitation to check against the plans and 542 sections of the City's specifications issued by the Sanitary Commission as part of the City's proposal to bidders, the plans submitted by the bidders in relation to the variant elements of the City's proposal in order to determine the real lowest bidder thereon. It was also necessary for the Sanitary Commission to examine the apparent or probable lowest bidders as to their ability, experience, facilities, resources and liquid assets to perform the contract work.

The tabulating, computing and checking of the bids commenced August 11, 1932. The oral examination of the four apparent or probable lowest bidders was commenced August 18, 1932. The tabulating, computing and checking of the bids was computed on August 16, 1932, and the oral examination of the four bidders apparently the lowest was completed September 10, 1932.

At a special meeting of the Sanitary Commission held September 12, 1932, the said Commission adopted a resolution transmitting the bids received, the examination of the bidders, and a report of its Engineer Member

to the Board of Estimate and Apportionment, with its recommendations for the award of said contracts.

This was so done in accordance with the resolution of the Board of Estimate and Apportionment, above referred to, approving of said contracts for advertising, which said resolution contained a condition that the Sanitary Commission should submit the bids received to the said Board, before the making of any award, for the approval of the said Board.

Subsequent to such submission made as aforesaid, the Sanitary Commission was requested and directed by The Mayor of The City of New York, on September 16, 1932, to proceed and examine four other bidders and transmit to the said Board the results of such examinations for its consideration.

In accordance with said request and direction, the examination of said four other bidders was commenced on September 19, 1932, and the record of such supplementary examinations was transmitted to the Board of Estimate and Apportionment on September 27, 1932.

The aggregate amount of the bids of the lowest formal bidders on the three contracts is the sum of Two Million One Hundred Thirty-Six Thousand ($2,136,000) Dollars.

2. During the period of six months commencing March 8, 1932, and ending September 7, 1932, the amount of the garbage and ashes dumped at sea was the following:

Month	Dumpers	Cubic Yards Ashes	Garbage	Total
March 8 to 31, 1932	109	135,490	36,471	171,961
April	131	155,103	45,739	200,842
May	109	116,810	51,899	168,709
June	106	97,487	67,808	165,295
July	89	84,432	53,926	138,358
August	96	83,123	64,137	147,260
Sept. 1 to 7th	23	19,589	16,475	36,064
TOTAL	663	692,034	336,455	1,028,489

All of which is respectfully submitted.

Dated, New York, September 30, 1932.

WILLIAM SCHROEDER, JR.,
Chairman, Sanitary Commission
of the City of New York.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

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Supreme Court of the United States

No. 10 Original—October Term, 1931

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

REPORT OF THE DEFENDANT, THE CITY OF NEW YORK

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

SUPREME COURT OF THE UNITED STATES

No. 13, Original—October Term, 1931.

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

To the Supreme Court of the United States:

Pursuant to the Decree of this Court in the above entitled cause, dated December 7, 1931, the defendant, The City of New York, respectfully presents the following report to this Honorable Court:

1. The Sanitary Commission, the head of the Department of Sanitation of the City of New York, is the Municipal Agency vested with and exercising exclusive jurisdiction over the matter of the removal and final disposition of ashes, garbage, and rubbish of the City of New York.

2. The following is a statement of the progress made in the matter of the construction of incinerator plants for the final disposition of garbage and rubbish in the City of New York for the period, October 1, 1931, to March 31, 1932.

On October 23, 1931, the defendant, The City of New York, duly selected an additional site for the erection and construction of a new incinerator, being a piece of land located on the northerly side of Northern Boulevard and 226th Street, Douglaston, Borough of Queens, and having an area of 249,775 square feet; that following such selection, proceedings were begun in the Supreme Court of the State of New York to condemn the said lands so selected as a site for the construction of an incinerator plant, and that title to the said lands so selected was vested in the City of New York on December 31, 1931.

Contracts, specifications and plans for the construction of four incinerator plants, each having a capacity for the incineration of 750 tons of garbage and rubbish in twenty-four hours, were prepared and transmitted to the Board of Estimate and Apportionment of the City of New York for approval thereof and the authorization of the expenditure of Municipal funds required for the carrying out of said contracts. One of the incinerator plants, construction of which is called for by the four contracts hereinabove referred to, will be erected on the site located at Douglaston hereinabove referred to, and the other three incinerator plants will be erected and constructed on sites duly acquired for such purpose by the City of New York prior to October 1, 1931; two of which latter sites are located in the Borough of The Bronx of the City of New York, and the third site located in the Borough of Manhattan of the City of New York.

3. During the period commencing December 7, 1931, being the date of the Decree herein, and ending March 7, 1932, the amount of the garbage and ashes dumped at sea was the following:

Month	Cubic Yards			
	Dumpers	Ashes	Garbage	Total
December 7 to 31, 1931	113	145,645	49,073	194,718
January, 1932	138	167,519	52,182	219,701
February, 1932	138	167,722	59,316	227,038
March 1 to 7, 1932...	31	37,045	11,521	48,566
Total	420	517,931	172,092	690,023

All of which is respectfully submitted.

Dated New York, March 31, 1932.

WILLIAM SCHROEDER, Jr.,
Chairman, Sanitary Commission
of the City of New York.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 8, Original.

12 10

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

REPORT OF THE CITY OF NEW YORK.

WILLIAM SCHROEDER, JR.,
Chairman, Sanitary Commission
of the City of New York.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 13, Original.

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

TO THE SUPREME COURT OF THE UNITED STATES:

Pursuant to the Decree of this Court in the above entitled cause, dated December 7, 1931, the defendant, The City of New York, respectfully presents the following report to this Honorable Court:

1. The following is a statement of the progress made in the matter of construction of incinerator plants for the final disposition of garbage and rubbish in The City of New York during the period from October 1, 1932 to March 31, 1933.

The statement under this heading in the last report, dated September 30, 1932, carried the recital of facts down to a point where the bids received for the construction of incinerator plants were pending before the Board of Estimate and Apportionment of The City of New York for their approval or disapproval as to the proposed awards thereon.

At a meeting of the said Board of Estimate and Apportionment held on November 18, 1932, a resolution was duly

adopted authorizing the Sanitary Commission of the Department of Sanitation of The City of New York to award two contracts for the erection and equipping complete (excepting plumbing and heating) of two Destructor Plants for the incineration of garbage and rubbish, each capable of destroying 750 tons of refuse in 24 hours, one each to be located as follows:

(A) At 215th to 216th Streets, 9th to 10th Avenues, in the Borough of Manhattan.

(B) At Zerega and Lafayette Avenues and Westchester Creek, in the Borough of The Bronx.

Pursuant to such approval so obtained from the Board of Estimate and Apportionment, the Sanitary Commission at a special meeting duly held at its office in the Borough of Manhattan on November 23, 1932, adopted resolutions awarding the said two contracts to the Superior Incinerator Company of Texas and The L. E. Myers Co., joint bidders, the contract for the plant in the Borough of Manhattan at a contract price of $696,395.00 and the contract for the plant in the Borough of The Bronx at a contract price of $713,140.00.

The contracts were executed by the Chairman of the Sanitary Commission, acting for The City, and by the Contractors on November 23, 1932, and registered by the Comptroller of The City of New York, in accordance with Charter requirements, on December 23, 1932.

On March 22, 1933, the work of actual construction of each of these plants was commenced at each of the sites.

2. During the period of six months commencing September 8, 1932, and ending March 7, 1933, the amount of garbage and ashes dumped at sea was the following:

		Garbage (In Cubic Yards)	*Ashes (In Cubic Yards)*	*Number of Dumpers*
September 8-30,	1932.....	47774	75099	79
October	"	54350	108172	105
November	"	41181	137002	116
December	"	44656	182317	152
January	1933.....	43280	184002	152
February	"	36728	169493	138
March 1-7,	"	9076	92609	35
TOTALS	.....	277045	948694	777

All of which is respectfully submitted.

Dated, New York, March 31, 1933.

WILLIAM SCHROEDER, JR.,
Chairman, Sanitary Commission
of the City of New York.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

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Supreme Court of the United States

No. 18 Original—October Term, 1933.

STATE OF NEW JERSEY,
Plaintiff,

against

THE CITY OF NEW YORK,
Defendant.

REPORT OF THE DEFENDANT, THE CITY OF NEW YORK.

PAUL WINDELS,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

(23329) Pandick Press, Inc., 22 Thames St., New York, U. S. A.

Supreme Court of the United States

No. 12, Original—October Term, 1933.

State of New Jersey,
Plaintiff,

vs.

The City of New York,
Defendant.

To the Supreme Court of the United States:

Pursuant to the Decree of this Court in the above entitled cause, dated December 7, 1931, the defendant, The City of New York, respectfully presents the following report to this Honorable Court:

1. The following is a statement of the progress made in the matter of construction of incinerator plants for the final disposition of garbage and rubbish in the City of New York during the period from March 22, 1933 to March 31, 1934.

(A) Manhattan Incinerator.

On March 31, 1934, the work of constructing this incinerator plant was 80 per cent. complete.

(B) Bronx Incinerator.

On March 31, 1934, the work of constructing this incinerator plant was 70 per cent. complete.

2. Since the filing of the previous report by the above-named defendant, the following is a statement of the quantities of garbage and ashes dumped at sea:

	Ashes (*In Cubic Yards*)	*Garbage*	*Number of Dumpers*
1933			
March 8-31	129,890	27,671	106
April	129,152	36,688	110
May	127,246	63,166	123
June	92,194	86,007	113
July	70,855	89,708	101
August	56,861	112,119	85
September	52,978	116,215	86
October	94,943	90,870	100
November	155,672	57,048	119
December	178,778	55,199	130
1934			
January	221,233	60,237	161
February	175,076	37,826	130
March 1-7	52,065	12,145	37
Totals	1,536,943	844,899	1,401

All of which is respectfully submitted.

Dated, New York, March 31, 1934.

THOMAS W. HAMMOND,
Deputy and Acting Commissioner
of Sanitation of The
City of New York.

PAUL WINDELS,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York,
Municipal Building,
Borough of Manhattan,
City of New York.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 10—Original.

10

STATE OF NEW JERSEY, *Plaintiff*, *vs.* CITY OF NEW YORK, *Defendant.*	*In Equity.* *Application for Further Relief at the Foot of the Decree.*

Motion for Leave to File Petition; Petition and Supporting Brief.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 8, 1933.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* CITY OF NEW YORK, *Defendant.*	*In Equity.* *Application for Further Relief at the Foot of the Decree.*

Notice.

To: Hon. Arthur J. W. Hilly, Corporation Counsel, Solicitor of Defendant.

Dear Sir:

Please be advised that on Monday, May 8, 1933, plaintiff will apply to the court for leave to file the annexed petition and supporting brief.

Yours respectfully,

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 1, 1933.

Motion.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* CITY OF NEW YORK, *Defendant.*	*In Equity.* *Application for Further Relief at the Foot of the Decree.*

Motion for Leave to File Petition.

COMES Now the State of New Jersey, by its Attorney-General, and asks leave of the court to file the annexed petition.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 8, 1933.

Statement.

The purpose of this petition is to secure relief to plaintiff against defendant's failure to make provision for compliance with the decree of this court, entered December 7, 1931, requiring the discontinuance of dumping of defendant's garbage at sea on and after June 1, 1933.

WILLIAM A. STEVENS,
Attorney-General,

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 8, 1933.

Proof of Service.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* CITY OF NEW YORK, *Defendant.*	*In Equity.* *Application for Further Relief at the Foot of the Decree.*

Proof of Service of Motion, Petition and Supporting Brief.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss.:

VERA E. CASTELLANO, of full age, being duly sworn, according to law, on her oath deposes and says:

On May 1, 1933, at the Post Office, in the City of Newark, New Jersey, I deposited, in sealed envelopes, with first-class postage thereon by registered mail prepaid, a true printed copy of the annexed motion, petition, and supporting brief, addressed to Hon. Arthur J. W. Hilly, Corporation Counsel, of the City of New York, as solicitor for defendant, at his office in the Municipal Building, Borough of Manhattan, City, County and State of New York.

VERA E. CASTELLANO.

Sworn and subscribed before me
this 1st day of May, 1933.

JOHN J. GAFFEY,
Attorney at Law of New Jersey.

Petition.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* CITY OF NEW YORK, *Defendant.*	*Application for Further Relief at the Foot of the Decree.*

Petition of Plaintiff—State of New Jersey.

Petitioner respectfully shows:

1. This is an original action instituted by complaint filed May 13, 1929, praying for a writ of injunction to restrain defendant from dumping garbage and refuse, or other noxious, offensive or injurious matter, into the ocean off the coast of New Jersey, and from otherwise defiling or polluting the waters and beaches of plaintiff.

2. After issue joined, the case was referred, on October 14, 1929, to Honorable Edward K. Campbell, Special Master, to take testimony, and to submit findings of fact, conclusions of law, and his recommendations for a decree.

3. Hearings were held and the case was submitted on oral argument and briefs before the Special Master, who filed his report March 20, 1931, submitting his conclusion that plaintiff was entitled to relief in accordance with the prayer of the bill, and recommending a decree accordingly.

Petition.

4. The Special Master also concluded and recommended that defendant should be given a reasonable time within which to put in operation sufficient incinerators to care for its garbage and rubbish.

5. The case was argued before the court on April 30, 1931, on defendant's exceptions to the report of the Special Master, and, by opinion delivered by Mr. Justice Butler on May 18, 1931 (*283 U. S. 473*), the court approved the Special Master's conclusions and recommendamendations and directed a decree for injunction to be entered in accordance with the prayer of the complaint, but it directed that before injunction was issued a reasonable time should be accorded to defendant to enable it to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials now dumped at sea, or to provide other means to be approved by the decree for the disposal of such materials. The case was referred back to the Special Master to ascertain what length of time would be reasonably necessary for that purpose, and to report his findings and a form of decree.

6. After hearings and argument on the re-reference, the Special Master filed his report on November 30, 1931, expressing the conclusion that four additional incinerators, with a rated daily capacity of 750 tons each, which defendant planned to construct, were necessary and that they should be ready for operation on or before June 1, 1933, and that until that date was a reasonable time to be allowed to enable defendant to otherwise finally dispose of its garbage and materials now dumped at sea.

7. A form of decree was consented to by the parties, and adopted and entered by the court on December 7, 1931 (*284 U. S. 585*), enjoining defendant, on and after

June 1, 1933, in accordance with the prayer of the complaint, and directing defendant to file with the court, on the first days of April and October of each year, beginning April 1, 1932, a report setting forth the progress made in the construction of incinerator plants for the final disposition of garbage and refuse.

8. Said decree provides that either party may apply to the court, on due notice to the other party, with respect to the progress of construction of the proposed incinerator plants or other means of final disposition of garbage and refuse, as may be deemed to be appropriate.

9. Said decree also provides that either party may, irrespective of the filing of the periodical reports, apply at the foot of the decree for any other or further action or relief, and the court retained jurisdiction for the purpose of any order or direction, or any supplemental decree, which it may deem proper in relation to the subject matter in controversy.

10. Pursuant to said decree defendant filed reports as of April 1 and October 1, 1932, and April 1, 1933. The last report, which was presented to the court on April 10, 1933, states that on March 22, 1933 the work of actual construction of two incinerator plants, each of a daily capacity of 750 tons, was commenced.

11. The actual construction of incinerators of the type and capacity recommended by the Special Master and proposed by defendant requires from ten to twelve months time. Four incinerators, of a daily capacity of 750 tons each, were found by the Master, and admitted by defendant, to be necessary to accomplish the final disposal of the quantity of garbage and refuse which defendant dumps at sea daily during the summer months.

12. Petitioner avers that it will be impossible for the two incinerators now under construction to be put in

operation by June 1, 1933, and when put in operation will be inadequate to enable defendant to comply with the decree, and defendant has not submitted for the approval of the court, as required by its decision and decree, any other proposed means for the final disposal of all or any part of its garbage and refuse now dumped at sea, and petitioner believes that defendant has made, and intends to make, no provision for compliance with said decree on June 1, 1933, but intends to continue after that date, to dump its garbage and refuse at sea as heretofore, in violation of said decree, to the great damage and injury of plaintiff, its citizens, and its twenty-nine municipal subdivisions located along the shore of the Atlantic Ocean found by the Special Master to be injuriously affected by such dumping at sea.

13. At the time said decree becomes effective the present term of this court will have ended and the court will be in recess until the opening of the October term 1933, and during such recess plaintiff will be without adequate means of redress or relief in case the decree should not be complied with on and after June 1, 1933.

14. Petitioner therefore prays:

(a) That defendant be required to make answer to this petition and show cause at an early day why it should not be required to fully inform the court of the provisions it has made for full compliance on and after June 1, 1933, with the decree of this court.

(b) That defendant at the same time show cause why it should not be required to give satisfactory assurance of full compliance with said decree, in the form of a bond with sufficient sureties, or other binding and effectual obligation, to be approved by the court, for the benefit of plaintiff, its citizens and municipal subdivisions, to adequately and effectively indemnify them against, and save

them harmless from, any loss, damage or expenses resulting from the neglect or failure of defendant to fully comply with said decree.

(c) That defendant show cause at the same time why it should not be adjudged in contempt of this court for its failure and neglect to make adequate provision for discontinuing the dumping of garbage and refuse at sea on and after June 1, 1933, as required by said decree, and also for its failure and neglect to provide four incinerators, each of a daily capacity of 750 tons, which are necessary for the otherwise final disposal of defendant's garbage and refuse now dumped at sea during the summer months.

(d) That plaintiff may have such further and other relief in the premises as the court may deem just and necessary to enforce the provisions of said decree and to protect plaintiff, its citizens and municipal subdivisions, from the results of any violation of said decree.

And your petitioner will ever pray, &c.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General.
Solicitors of Plaintiff-Petitioner.

May 8, 1933.

Petitioner's Brief in Support of the Foregoing Petition.

Argument.

The procedural facts upon which this petition is based are stated therein as they appear of record in this case and the decision and decree of the court.

References herein, unless otherwise stated, are to the Special Master's Report on Re-reference.

The decree entered by the court on December 7, 1931 (*284 U. S. 585*) was agreed to by the parties *Rep. p. 16.*

In December, 1929, the department of Sanitation (which has jurisdiction over the disposal of defendant's garbage and refuse) made a report containing a comprehensive program for the sanitary disposal of all of defendant's garbage and refuse and recommended the immediate construction of four incinerators, which were then regarded as necessary for immediate requirements. *Rep. pp. 3, 4.*

For the disposition by incinerators of the average daily dumpings at sea of 3,000 tons in the summer months the Master found that there should be immediately provided additional incinerator capacity to that extent, unless by increased consumption in existing incinerators, or by some other temporary expedient, the need of increased capacity was reduced. *Rep. p. 4.* Although the decree enjoined the defendant to operate and utilize the existing incinerators and other facilities for the final disposition of garbage and refuse in such a manner as to reduce to the lowest practicable limit the amount of garbage dumped at sea (*284 U. S. 585, 586*), the reports filed by defendant as of April 1, 1932, October 1, 1932 and April 1, 1933, show no diminution in the quantity dumped at sea. It is therefore presumed that additional incinerator capacity

of at least 3,000 tons per day, as found by the Master, is still necessary to avoid dumping at sea.

The Special Master definitely found that four additional incinerators, each of a daily capacity of 750 tons, were necessary to dispose of the amount of garbage and refuse then dumped at sea in the summer months, and his recommendation to that effect was approved by the court in its decision rendered May 18, 1931.

The Master found that defendant had acquired in 1927, 1928 and 1929, three incinerator sites upon which defendant represented to the Special Master at the hearings on re-reference in July, 1931, that it proposed to erect three incinerators of 750 tons daily capacity each, and that the site for the fourth incinerator of like capacity in the Borough of Manhattan was then in the process of acquisition and that such fourth site would be available for use by the fall of 1931. *Rep. p. 5-6.* Defendant's report as of April 1, 1932 shows (p. 2) that the site for this fourth incinerator was acquired prior to October 1, 1931, and that a fifth site (for the Douglaston incinerator) was acquired December 31, 1931.

Plans and specifications for the proposed four incinerators were already nearly completed when the hearing on re-reference was held in July 1931, *Rep. pp. 13-14.* The report of April 1, 1932 shows that contracts, specifications and plans for four incinerators had theretofore been submitted to defendant's Board of Estimate and Apportionment for approval and authorization (*p. 2*).

Defendant's report of October 1, 1932 shows that the Board of Estimate and Apportionment took no action on those contracts, specifications and plans until June 17, 1932, when it approved only *three* of the four incinerators recommended the previous year. It shows that bids were not advertised until July 13, 1932 (p. 2). Bids were

opened August 10, 1932 and it was not until September 10, 1932, that the examination of the bids was completed (p. 2). The authorization of the contracts was not made until November 18, 1932, and then for only *two* incinerators of 750 tons daily capacity each (*Defts. Report of April 1, 1933,* pp. 1-2). Contracts for those two incinerators were awarded November 23, 1932, and executed a month later. Notwithstanding an open winter during which construction work was almost continuously carried on in New York City and vicinity, actual work on those two incinerators was not commenced until March 22, 1933 (*ibid, p. 2*).

There has never been any question about the availability of funds for the four incinerators recommended by the Special Master. The Master found that appropriations had already been made and that all that was necessary to make the money immediately available was a resolution of the Board of Estimate and Apportionment allocating the funds to these particular projects (*Rep. p. 14*).

The testimony, upon which the Master based his conclusion that four additional incinerators necessary to enable defendant to discontinue entirely the dumping of garbage and refuse at sea could be constructed and put in operation on or before June 1, 1933, shows little difference of opinion between the eminent engineers produced by the respective sides. Plaintiff's engineers testified that 10, and defendant's engineers testified that 12, months would be necessary for the actual construction of a new incinerator ready for operation, and an additional six weeks would be required for testing; which, however, could be deferred until the fall or winter when there is a lesser demand for incinerator capacity than in summer (*Rep. pp. 10-13*). Both sides agreed that all four incinerators could be constructed simultaneously.

At this rate the two incinerators on which work was started March 22, 1933, cannot possibly be completed before January or February 1934. Meanwhile, if no other provision is made, and none has been submitted to the court for approval as required in the decision, *283 U. S. 473, 483,* and by the decree *284 U. S. 585, 587,* the dumping of garbage at sea will be continued during the summer season of 1933, when plaintiff's waters and beaches will be used daily by many thousands of persons, and the nuisance so long suffered, will continue as usual at least for another year.

The Special Master's report on the merits, filed March 20, 1931 (pp. 19-24), reviewed the history of defendant's dumping of garbage at sea and the disgusting nuisance that resulted in the accumulation of putrid masses of animal and vegetable matter in the waters and upon the beaches of plaintiff since 1918, in ever increasing quantities, which must be immediately removed at the expense of private owners or the municipalities to permit the use of the beaches, and to avoid foul and repellent smells, accumulation of flies and nauseating odors which sometimes reached the houses of the inhabitants (p. 50).

He also reviewed (pp. 19-23) the history of two decades of complaints and protests against this repulsive nuisance made on behalf of plaintiff by its successive chief executives, legislatures and municipalities, by various private and municipal organizations along the shore, and by various officers of the Federal government; also the numerous reports and recommendations of defendant's own officers and departments condemning the practice of dumping defendant's garbage at sea. Defendant took no notice of these complaints, protests and recommendations and took no action to stop the cause of the nuisance. On the contrary it continuously increased the dumping of its garbage

at sea and the resulting nuisance to plaintiff's waters and beaches.

After this review of injury and indifference, the Master concludes (p. 30) "that the delay of defendant in adopting a proper method of disposal has been unreasonably long."

With the necessary sites for four incinerators all in the possession of defendant prior to October 1, 1932, and with the necessary funds available before that time for actual construction, it was the solemn duty of defendant, in view of the decision of the court rendered in this case on May 18, 1931, to proceed immediately with the construction of incinerators without waiting for the decree of the court on re-reference. However, it did nothing between the filing of the Master's report in March, 1931, and the court's decree of December 7, of that year, and the progress reports filed by defendant as of April 1 and October 1, 1932, and April 1, 1933, show that no actual work was begun during the interval of 15½ months that elapsed between the entry of the decree and the beginning, on March 22, 1933, of actual construction work on two incinerators described at page 2 of the report filed as of April 1 (and presented to the court April 10), 1933.

Defendant has not shown that diligence which equity and justice, and the decree of this court, require. Knowing that it faces default under the decree it continues deliberately and in silence down almost to the very date of the dead line, without taking the measures obviously necessary for compliance with the court's decree. Defendant is in default not only because the two proposed incinerators will not be ready on time, but also because it has failed to do anything toward providing two more plants which the Master found (and defendant admitted) would be necessary to stop dumping at sea.

Supporting Brief.

On June 1, 1933, when the decree goes into effect, the present term of court will have ended, the court will have risen, and plaintiff will be helpless until the new term opens in October. Under these circumstances, plaintiff feels bound to bring the matter to the court's attention before adjournment in order that adequate protection may be afforded during the court's recess.

In this posture of affairs, plaintiff and the court are entitled to know before the court adjourns what measures defendant has taken to comply with the decree, and, in view of the apparent lack of adequate provision for compliance, to have some binding assurance against the evil results of a default.

Conclusion.

For these reasons plaintiff urges the prayer of the foregoing petition.

Respectfully submitted,

WILLIAM A. STEVENS,
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Solicitors for Plaintiff-Petitioner.

May 8, 1933.

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CHARLES ELMORE

BEACH POLLUTION CASE.

Supreme Court of the United States

No. 18 Original—October Term 1933.

STATE OF NEW JERSEY,
Plaintiff,

vs.

CITY OF NEW YORK,
Defendant.

In Equity.

On Second Re-reference.

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION.

WILLIAM A. STEVENS,
Attorney General.

DUANE E. MINARD,
Counsel.

November 6, 1933.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

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Supreme Court of the United States

No. 12 Original—October Term 1933.

STATE OF NEW JERSEY, *Plaintiff,* *vs.* CITY OF NEW YORK, *Defendant.*	*In Equity.* *On Second Re-reference.*

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION.

Statement of the Case.

This matter is now before the court on the return of an order to show cause, entered May 29, 1933 (*77 L. ed. 1011*), and on the report of Honorable Edward K. Campbell, Special Master, filed herein October 19, 1933, on the second re-reference.

This is an original action instituted by complaint filed May 13, 1929, praying for a writ of injunction to restrain defendant from dumping garbage and refuse, or other noxious, offensive or injurious matter, into the ocean off the coast of New Jersey, and from otherwise defiling or polluting the waters and beaches of plaintiff.

On October 14, 1929 the case was referred to Honorable Edward K. Campbell, Special Master, to take testimony, and to submit findings of fact, conclusions of law, and his recommendations for a decree.

His report, filed March 20, 1931, expressed his conclusion that plaintiff was entitled to relief in accordance with the prayer of the complaint.

The case was argued before the court on April 30, 1931, on defendant's exceptions to that report and, in an opin-

ion delivered by *Mr. Justice* Butler on May 18, 1931 (*283 U. S. 473*), the court approved the Special Master's conclusions and recommendations and directed a decree for injunction to be entered in accordance with the prayer of the complaint, after an allowance of a reasonable time to enable it to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials now dumped at sea, or to provide other means to be approved by the decree for the disposal of such materials. The case was referred back to the Special Master to ascertain what length of time would be reasonably necessary for that purpose, and to report his findings and a form of decree.

In his report filed November 30, 1931, he found that four additional incinerators, with a rated daily capacity of 750 tons each, were necessary, and that they should be ready for operation on or before June 1, 1933, and that until that date was a reasonable time to be allowed to enable defendant to otherwise finally dispose of its garbage and materials now dumped at sea.

A form of decree on that basis was consented to by the parties, and adopted and entered by the court on December 7, 1931 (*284 U. S. 585*), enjoining defendant, on and after June 1, 1933, in accordance with the prayer of the complaint, and directing defendant to file with the court, on the first days of April and October of each year, beginning April 1, 1932, a report setting forth the progress made in the construction of incinerator plants for the final disposition of garbage and refuse, and also the amount of garbage and refuse dumped at sea during the periods of the reports.

The decree also provided that either party may apply to the court, on due notice to the other party, with respect to the progress of construction of the proposed incinerator plants or other means of final disposition of garbage and

refuse, as may be deemed to be appropriate, and that either party may apply at the foot of the decree for any other or further action or relief. The court retained jurisdiction for the purpose of any order or direction, or any supplemental decree, which it may deem proper in relation to the subject matter in the controversy.

Defendant filed reports as of April 1 and October 1, 1932 and April 1, 1933. The last report, presented to the court on April 10, 1933, stated that on March 22, 1933, the work of actual construction of two incinerator plants, each of a daily capacity of 750 tons; was commenced.

The progress report of April 1, 1933, showed that it was impossible for the two incinerators to be completed in time to comply with the decree, and that the two additional incinerators, necessary to comply with the decree, had not been commenced, or even authorized, by defendant, and that the nuisance found by the court to exist was likely to continue indefinitely unless some action was taken to compel compliance with the decree. Plaintiff therefore, on May 8, 1933, on notice to defendant, applied under the decree, for further relief and prayed as follows:

(a) That defendant be required to make answer to this petition and show cause at an early day why it should not be required to fully inform the court of the provisions it has made for full compliance on and after June 1, 1933, with the decree of this court.

(b) That defendant at the same time show cause why it should not be required to give satisfactory assurance of full compliance with said decree, in the form of a bond with sufficient sureties, or other binding and effectual obligation, to be approved by the court, for the benefit of plaintiff, its citizens and municipal subdivisions, to adequately and effectively indemnify them against, and save them harmless from, any loss, damage or expenses result-

ing from the neglect or failure of defendant to fully comply with said decree.

(c) That defendant show cause at the same time why it should not be adjudged in contempt of this court for its failure and neglect to make adequate provision for discontinuing the dumping of garbage and refuse at sea on and after June 1, 1933, as required by said decree, and also for its failure and neglect to provide four incinerators, each of a daily capacity of 750 tons, which are necessary for the otherwise final disposal of defendant's garbage and refuse now dumped at sea during the summer months.

(d) That plaintiff may have such further and other relief in the premises as the court may deem just and necessary to enforce the provisions of said decree and to protect plaintiff, its citizens and municipal subdivisions, from the results of any violation of said decree.

Defendant appeared and filed an answer, and also a petition alleging inadequacy of funds to provide four incinerators, and praying for an extension of time to April 1, 1934, for the completion of the two incinerators then under construction, and for a modification of the court's decree to that extent. The court, on May 29, 1933, referred the matter back to the Special Master to ascertain and report:

> (1) What shall have been done by defendant up to September 15, 1933, and the time reasonably required to enable it to comply with the decree;
>
> (2) The amounts that shall have been expended, subsequent to June 1, 1933, by plaintiff and its political subdivisions to prevent or lessen the defilement or pollution of the waters, shores and beaches within that state and the damages respectively sustained by them as a result of defendant's failure to comply with the decree.

and directed that the court would hear the parties on November 6, 1933, without exceptions to the Master's report.

The Master's report under that order, filed October 19, 1933, recites the proofs adduced at the hearings, but makes no recommendations.

The matter is now before the court for action on the cross petitions of the parties respecting defendant's failure to comply with the decree.

ARGUMENT.

The Special Master has made three reports in this case; the first, filed March 20, 1931, on the main case, the second, filed November 23, 1931, on the first re-reference, and the third, filed October 19, 1933, on the second re-reference. These reports are herein referred to as "1st Rep.," "2nd Rep.," and "3d Rep.," respectively. Unless otherwise indicated, re-references herein relate to the Master's report, and the stenographer's transcript of the testimony and the exhibits (herein referred to as "S. M.") on this second re-reference.

(1)

Four incinerators are necessary to comply with the decree.

In December, 1929, the department of Sanitation (which has jurisdiction over the disposal of defendant's garbage and refuse) made a report to the Board of Estimate and Apportionment (defendant's governing body) containing a comprehensive program for the sanitary disposal of all of defendant's garbage and refuse, in which it recommended the immediate construction of four incinerators, as necessary for immediate requirements (*2d Rep. pp. 3, 4*).

On the first re-reference the Master found that there should be immediately provided additional incinerator capacity to the extent of 3,000 tons daily, unless, by increased consumption in existing incinerators, or by some other expedient, the need of increased capacity was reduced (*2d Rep. p. 4*). Although the decree enjoined the defendant to operate and utilize the existing incinerators and other facilities for the final disposition of garbage and refuse in such a manner as to reduce to the lowest practicable limit the amount of garbage dumped at sea (*284 U. S. 585, 586*), the reports filed by defendant as of April 1, 1932, October 1, 1932, and April 1, 1933, and the testimony on this record (*S. M. 600-1*), show no substantial diminution in the quantity dumped at sea.

On September 22, 1931, the Chairman of the Sanitary Commission submitted to the Board of Estimate and Apportionment, for approval of terms and conditions, a form of contract, and plans and specifications, for four incinerators (*Deft.'s Ex. 2; Rep. p. 2*).

The record on this re-reference shows that in the proceedings of the Board of Estimate and Apportionment, from September 22, 1931 to June 17, 1932, the four incinerators recommended by the Sanitary Commission were under consideration, but on June 17, 1932, without any explanation or assigned reason, one of them was dropped and never further considered (*Deft.'s Ex. 2, 5, 11, 12, 14, 17, 21-25, 33-36, 39-41, 44, 46; Rep. pp. 2-6*). Bids were advertised and received for only three incinerators (*Deft.'s Ex. 46, 48, 58, 59, 60; Rep. pp. 6-9*). Thereafter, on October 6, 1932, one of the three incinerators (Douglaston) was referred back to the Department of Sanitation for further consideration and report, and there it still remains. Contracts for only two were let (*Rep. pp. 7-8*).

On October 24, 1932, the Assistant Engineer of the Board of Estimate and Apportionment, in response to a

request of that Board, reported on the entire question of incineration. In his conclusions, he stated:

> "there does not appear to be any good reason for considering at this time the abandonment of construction by the city of the *three* new incinerators."

He also reported that the fourth incinerator should be built (*Deft.'s Ex. 66, p. 19*).

Sites for four incinerators had all been acquired prior to December 31, 1931 (*Deft.'s Progress Report April 1, 1932, p. 2: Deft.'s Ex. 5*).

Mr. Goodrich, the present Sanitary Commissioner, testified on October 2nd to the following record of scows dumped at sea, between June 1st and September 15th, 1933; June, 116; July, 100; August, 85; September 1 to 15, 36; total 337; averaging 1,500 cubic yards per scow, and about three cubic yards to the ton of garbage (*S. M. 600-1*). That represents a total of 505,500 yards or 168,500 tons. Excluding Sundays, but including holidays, and excluding the 28 days during that period, when Mr. Goodrich testified no garbage was dumped at sea, this quantity represents an average of 2,635 tons per day.

He testified that the two incinerators now under construction would not take care of all the garbage and refuse now dumped at sea (*S. M. 204*). To discontinue, entirely, sea dumping it will be necessary to dispose of the remainder in land fills, or to build two additional incinerators (*S. M. 205-6, 215-6; Rep. p. 21*).

It therefore appears that four incinerators, each of 750 tons daily capacity, are as necessary now as they were in 1929, and that they are absolutely necessary for compliance with the decree of the court.

(2)

Defendant has failed to take the necessary steps to comply with the decree.

The testimony of the present Sanitary Commissioner, quoted by the Master at pages 18 and 19 of his report, show conclusively that no attempt has been made to comply with the decree by discontinuing dumping at sea. The two incinerators now under construction are admittedly insufficient. Absolutely no plan or program for providing the necessary remaining incinerator capacity has been adopted or seriously considered by defendant, from the time two of the four incinerators recommended to the Board of Estimate and Apportionment by the Sanitary Commission in December, 1929 (*2d Rep. pp. 3-4*), and again on September 22, 1931 (*Deft.'s Ex. 2; Rep. p. 2*) were dropped from consideration (one on June 17, 1932, and the other on October 6, 1932) and have so remained until the present time (*S. M. 590-2*). All four incinerators are essential to defendant's compliance with the decree of this court.

The record of progress on the two incinerators under construction is one of neglect, indifference, incompetence, and contemptuous disregard of a serious obligation.

The Sanitary Commission recommended the immediate construction of four 750-ton incinerators in December, 1929, as immediately necessary. It repeated that recommendation on September 22, 1931. No action was taken by the Board of Estimate and Apportionment on those recommendations before the date of the court's decree of December 7, 1931.

Even that decree inspired no action.

On December 10, 1931, the Committee of the Whole of the Board, by a resolution recommended to the Board the adoption of the forms of contract, plans and specifications

submitted by the Sanitary Commission on September 22 of that year (*Deft.'s Ex. 23*). From that date until August 10, 1932, the time was consumed in working up to the receipt of bids on three incinerators, on which contracts were let for two on November 23, 1932 (*Deft.'s Ex. 71*). The contract provided for completion in 200 working days, but work was not commenced until March 24, 1933. The tedious progress of that "red tape" is disclosed in Defendant's Exhibits 1-82, and is reviewed by the Master at pages 2-11, of his report.

During that time, the Board was repeatedly reminded of the court's decree, and the danger of an adjudication of contempt. Members of the Sanitary Commission (which had the responsibility for disposing of the garbage and refuse and for building incinerators to stop dumping at sea), and others, were conscious of undue delay, and frequently prodded the Board for action (*Deft.'s Ex. 25, 43, 44*).

When the matter of these incinerators again came before the Committee of the Whole of that Board, on November 1, 1932 (nearly a year after that Committee had recommended action, *Deft.'s Ex. 23*) the comptroller of defendant (Mr. Berry) called attention to the decree of this court and to the danger of the Board being held in contempt for non-compliance. He charged the Acting Mayor (Mr. McKee) with being responsible for the delay of nearly a year in the building of incinerators. The Acting Mayor cheerfully accepted that responsibility (*Deft.'s Ex. 67, pp. 42-3*).

On November 18, 1932, that Board approved the award of contracts for two incinerators, (*Deft.'s Ex. 69*), and the contracts were awarded five days later (*Deft.'s Ex. 71*). Those contracts did not include plumbing and heating, which were necessary elements in the completion of the incinerators. Contracts for plumbing and heating were

submitted to the Mayor by the Chairman of the Sanitary Commission on April 12, 1933, in a communication in which he urged immediate action because of the injunction decree of this court. He also pointed out that the delay in letting the plumbing and heating contracts was delaying the contractor, who claimed damages against the city, and had asked for an extension of time to complete the work, on account of that delay (*Deft.'s Ex. 73, 78*).

Although the contracts for plumbing and heating were approved on May 19, 1933 by the Board of Estimate and Apportionment (*Deft.'s Ex. 77*), and by the Corporation Counsel on May 25, 1933 (*Deft.'s Ex. 76*), they have not yet been let (*Rep. p. 141; S. M. 598*). The contractor testified that the installation of plumbing and heating pipes was necessary to the progress of the work above the foundation level and that because of the failure to let the plumbing and heating contracts the work on one of the incinerators had been at a standstill since July 28, 1933, and the work on the other would be at a standstill within ten days of the date of his testimony (October 2, 1933) because he could not pour concrete above the foundation level until the pipes were in place (*S. M. 610-12*).

Other causes of delay exist. Unsettled disputes between defendant and its contractors are pending over various facilities and equipments to be built into the incinerators, including cranes, blowers, hoppers, doors, sidewalks, ramps, light and power and furnaces (*S. M. 645-9*). No apparent effort is being made to adjust these difficulties or to exercise defendant's power under the terms of the contracts to enforce the time limit for construction.

Although the construction work was actually begun on March 22, 1933, under contracts which provided for completion within 200 working days, the contracts stood, on October 2, 1933; one 34% completed and the other about

20% completed (*Rep. p. 10; S. M. 610*). The Sanitary Commissioner expressed the opinion that they would not be completed before June 30, 1934 (*S. M. 591*).

Defendant and the contractor blame each other for delays, but the outstanding fact is that the plumbing and heating contracts have not yet been let and no work above the foundation level can be done until those contracts are let, since heating and plumbing pipes must be placed in position before the concrete for the super-structures can be poured.

On the first re-reference considerable testimony was taken as to the required amount of time to prepare plans, acquire and clear sites, advertise for bids, let contracts, accomplish the necessary municipal legislation preliminary to the work of constructing incinerators, and the necessary amount of time for actual construction and testing.

By consent of the parties the Master took the outside limit proposed by the defendant, namely, June 1, 1933, and that date was embodied in the consent decree entered by the court on December 7, 1931 (*284 U. S. 585*). Defendant has never claimed that the time was insufficient for the construction of four incinerators of 750 tons daily capacity each.

No claim is made that lack of funds delayed the two incinerators now under construction. The decree, consented to by defendant, allowed 20 months to complete the incinerators. On the first re-reference defendant admitted that four incinerators could be constructed, simultaneously, in the same period required for one. The contractors of the two under construction agreed to complete them within 200 working days, which is less than two-thirds of the number of working days in a calendar year.

It therefore appears that delay in those two was due to a whole year's delay (after the decree) in awarding

contracts and another four months' delay in commencing work, during a winter (1932-3) which was notoriously mild and open, and suitable for construction work.

The necessity for an extension of time on those two incinerators was due to a deliberate and stubborn disregard of the decree, and disregarded by the Board of Estimate and Apportionment to oft repeated warnings and pleas for expedition made by the Sanitary Commission. This conduct does not deserve the indulgence of the court, while plaintiff suffers from the delay. He who seeks equity must do equity, and also come into court with clean hands.

(3)

Defendant has not shown any valid financial reason for not complying with the decree.

During the hearings on the first re-reference, Mr. Smith, a member of the Sanitary Commission of defendant, testified that sufficient money for all four incinerators had been appropriated by defendant and would be immediately available upon the passage of a resolution by the Board of Estimate and Apportionment transferring its use to the four particular incinerators then under consideration (*S. M. 289, 319, 686, 1st Re-Ref.*).

He testified (in July, 1931) that in order to make the money available only a resolution of the Board of Estimate and Apportionment was necessary, and that, on May 28, 1931, the Chairman of the Sanitary Commission had requested that the funds previously appropriated for various incinerators should, by resolution, be made applicable to the four then in contemplation (*S. M. 289, 290, Deft.'s Ex. 5, 1st Re-Ref.*). He also testified that the Board had asked his commission to defer the re-allocation of this money until the plans and specifications had been

completed (*S. M. 319, 1st Re-ref.*). At the hearing of July 24, 1931, which was the last hearing on the first re-reference, the Special Master recalled Mr. Smith, and expressly inquired of him whether the money for these incinerators was available, and if not what condition it was in. Mr. Smith testified "It is available after being allocated by the Board of Estimate and Apportionment to this specific project." He stated that the money had been originally provided for a larger number of smaller incinerators in various localities and that because of the decision to build a fewer number of larger incinerators, the small amounts previously allocated to the smaller incinerators would have to be added together and re-allocated to these specific larger projects (*S. M. 687-8, 1st Re-ref.*).

In the Master's report on the first re-reference he stated, at page 14—

> "The facts show that appropriations have already been provided for incinerators in various localities. These were provided for smaller plants than are now deemed efficient, and larger plants are proposed to take their places. Therefore it is necessary to take a number of small amounts and add them together to make the larger sum necessary for the present program. Application must accordingly be made to the Board of Estimate and Apportionment to allocate said sums to this particular project. This Board acting favorably, *the money is available*, and there is no suggestion that the Board will act unfavorably." (*Italics ours.*)

Plans and specifications, and forms of contract, for four incinerators were submitted on September 22, 1931, by the Chairman of the Sanitary Commission for action by the Board of Estimate and Apportionment, with a request for "sub-authorizations of *existing corporate stock funds*" for their erection.

From the above language it is clear that the Chairman of the Sanitary Commission, on September 22, 1931, had the same understanding about the availability of "*existing*" funds as his fellow member, Mr. Smith, had when he testified on the second re-reference on July 24 of the same year.

For the completion of the incinerators within a given time two elements were essential; first, the availability of funds to do the work, and second, the time within which to do the work. Because the defendant's officers admitted that the funds were available, the hearings on first re-reference were devoted entirely to the question of time for preliminaries and construction. The availability of funds was never at any time questioned by defendant during the hearings on re-reference, and the Master's report on the first re-reference and the consent decree were based upon the definite assurance by defendant of the availability of funds.

Defendant filed progress reports under the decree, on April 1 and October 1, 1932, and April 1, 1933, respectively. Those reports relate the progress on letting contracts and construction work, but none of them contains a word about lack of funds. That question was not raised until defendant was called upon, on May 8, 1933, for an explanation of its delay. Then, for the first time, it claimed lack of funds and prayed for an extension of time to complete the two incinerators which had been begun. It remained silent on this question until within less than a month before the effective date of the decree. At the last moment when confronted with contempt proceedings, it sought refuge behind the shelter of "depression" and presented a poverty plea. Equity and good conscience required that it bring this matter (if it existed) to the attention of the court at an early date. According to the testimony submitted on this re-reference, if it is true, it

knew of this condition when it filed its first report on April 1, 1932. In fact, on that basis, it knew it (if true) when it consented to the decree of December 7, 1931, but it remained silent through the entire period of one and one-half years given it to complete the incinerators, during which the court and the plaintiff assumed, and had the right to assume, that the only question involved was the physical construction of the incinerators, and that the decree would be complied with.

The Special Master refers in his report on this re-reference (*p. 22*) to the testimony in 1931 on the first re-reference that the funds for building the four incinerators were available. He says—

> "Under the testimony adduced at this hearing the above statement is in error and the sale of authorized corporate stock notes or bonds is necessary."

It is respectfully submitted that the truth of the testimony given at the first re-reference about the availability of the money has never been denied. On the hearings on this re-reference no witness has testified that the money was not then available. Such denial does not appear anywhere in this record.

Is the court to believe the word of the Chairman of the Sanitary Commission, and the word of a member of that commission given under oath in 1931, that the money was then available, or the statement of counsel, or some subordinate *off the record* in 1933, made for the purpose of excusing defendant's contempt of a decree of this court?

If the court cannot take the official statement of the Chairman and the sworn testimony of a member of the Sanitary Commission, and rely upon them in good faith, as the Master and the court both did on the first re-ref-

erence, how can defendant, standing at the eleventh hour before a court of equity charged with contempt of its decree, be heard to state the contrary for the sole purpose of purging its contempt, and where no extenuating circumstances have been shown or timely pleaded to excuse a flagrant disregard of the court's order?

At no time during the proceeding before the Board of Estimate and Apportionment relating to this subject, as those proceedings are shown in Defendant's Exhibits 1 to 82, on this re-reference, and recited in the Master's report, was it suggested that the lack of money was the cause of delay, or of abandoning two of the four incinerators. On the contrary, on October 24, 1932, the Assistant Engineer of the Board of Estimate stated that four incinerators should be built (*Deft.'s Ex. 66, p. 19*), and when the subject was discussed in November, 1932, before the Committee of the Whole of that Board, when Acting Mayor McKee was accused of responsibility for the delay, and assumed that responsibility, the question of financial inability was not suggested or discussed (*Deft.'s Ex. 67, pp. 42-3*).

Various difficulties, imposed by its own laws and procedure, have been interposed by defendant as grounds for delay or its inability to provide funds. These need not be discussed, since they present no valid reasons for failure to comply with a decree of this court.

Statutory and other difficulties in the way of raising funds to carry out the court's orders were interposed by the defendant in *Wisconsin* v. *Illinois,* 281 U. S. 179, respecting which the court said:

(p. 197)

> "It already has been decided that the defendants are doing a wrong to the complainants, and that they must stop it. They must find out a way at their peril. We have only to consider what is pos-

> sible if the state of Illinois devotes all its powers to dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defenses upon difficulties that it has itself created. If its Constitution stands in the way of prompt action, it must amend it or yield to an authority that is paramount to the state."

In spite of testimony offered by defendant to show that funds for incinerator construction can be obtained only by the sale of corporate stock notes and that none can now be sold, important facts clearly appear from the record on this re-reference which destroy defendant's claim of lack of available funds to comply with this decree.

Mr. Duncan MacInnis, Chief Accountant of the Department of Finances of defendant, testified concerning financial conditions of the city since the beginning of 1931 (*S. M. 218-19*). He testified that in 1932 the city registered $8,900,000 of new contracts, including $1,410,000 for the two incinerators in question (*S. M. 221*). Out of the $200,000,000 of corporate stock notes authorized by the legislature in March 1931, (*S. M. 220*) the city still had at the time the witness testified (*July 17, 1933*), a margin of $5,915,000 for issuance (*S. M. 222*); that city expenditures for subway work were: 1931, $70,000,000; 1932, $80,000,000; 1933, $6,000,000 (*S. M. 232-3*).

The city is spending 12 million dollars for school, docks and hospital construction in 1933 (*S. M. 233*). It is authorized by law to construct local improvements costing in excess of $50,000 and assess the cost direct upon the property in the city (*S. M. 235*). *It has issued corporate stock notes in 1933 to the amount of $5,000,000 for subway work. $80,000,000 of such notes were also issued in 1932, and $70,000,000 in 1931 for the same purpose* (*S. M. 236*).

If defendant could sell notes for subways in 1932 and 1933 in the aggregate of 85 million dollars, why could it not have sold another two million dollars, or used some of the proceeds of those notes, to enable it to comply with the court's decree?

Defendant has offered to a syndicate of bankers an issue of corporate stock notes to renew existing notes and for an additional sum of $5,000,000, aggregating $28,000,000, but it refused to take the issue (*S. M. 241*). No attempt has been made to sell notes to, or to borrow money from, any other banks or syndicates (*S. M. 246*).

As to the source of the funds for the two incinerators under construction, there is a conflict in the testimony. Mr. MacInnis testified that those funds came from the sale of corporate stock notes in June, 1933, (*S. M. 237-9*). There is no explanation why enough money for two more incinerators could not have been obtained by the same method at the same time. There is no proof of an attempt to do so.

Mr. Goodrich testified (*S. M. 622*) that money for the two incinerators under construction came, as far as he knew, from an appropriation from the Board of Estimate and Apportionment. This money was "set aside from the funds." Why enough money for two more incinerators was not provided in the same way does not appear. MacInnis stated definitely that no offer of notes for incinerator construction had been made (*S. M. 240*).

Mr. MacInnis testified to the city's budgets (in round figures) as follows:

1930	$570,000,000	(*S. M. 223*)
1931	620,000,000	
1932	631,000,000	
1933	519,000,000	(*S. M. 224*)

The city ratables were, 1930 $18,233,000,000, 1931 $18,800,000,000, 1932 $19,600,000,000, 1933 $18,000,000,000 (*S. M. 231*).

Defendant's comptroller published, on October 21, 1933, a statement of the proposed budget for 1934, as follows (*N. Y. Times, Oct. 22, 1933, p. 8*):

> "The total city budget for the year 1933 amounted to $518,427,972.16—representing a decrease under the budget for the year preceding of approximately $113,000,000.
>
> "In preparing the proposed budget for 1934, submitted today, the Board of Estimate found it necessary to include certain increases, mandatory or constructively mandatory, over the figures of 1933, amounting to $28,075,883. These represent the added needs of the city's debt service, annual increases in pensions and in certain salaries necessary under existing legislation, and increases due to emergency demands upon the city's charitable and relief resources other than those made from the emergency relief funds.
>
> "These increases are as follows:

For the city debt service	$13,956,000
For pension funds	5,494,883
For salary increments	2,808,000
Charges for increase in the number of city dependents cared for by private charitable institutions; for increase in the number of patients cared for by city hospitals; and for veterans relief	462,000
Net increases in appropriations for the Board of Education, due to the reduced allowance for educational aid from the State	2,243,000
Added positions in various new courts, required by legislative act	92,000
Cost of additional election districts	20,000

> "These requirements, added to the 1933 budget figures, brought the real total from which reductions could be made to $546,498,855."

Fabulous amounts of money can be found for voluntary purposes, but nothing can be found to enable defendant to comply with a decree of this court. It chooses to build two, instead of four, incinerators, and finds the money without difficulty, but for the other two, it says no money is available. It has "wool for my master and wool for my dame," but none for compliance with the decree of the highest court in the land.

Plaintiff has sought relief for 20 years from the abominable nuisance of defendant's garbage and refuse in its waters and on its shores. It proved its case in this court and obtained a decree according to the prayer of its complaint. Yet it has no benefit of the decree. The public welfare requires that the decrees of this court shall be respected and observed. If defendant can disregard them with impunity their virtue and force is destroyed, and there is no redress against the collossal public nuisance which it constantly imposes upon its neighbor.

Reference is made by the Master to Mr. McAneny's testimony respecting an application for funds to the Reconstruction Finance Corporation (*pp. 13-14*). That corporation has been in existence for several years, but defendant's sense of duty has never prompted it to apply thither for funds to enable it to comply with the court's decree. Up to October 2, of this year, no such application had been made. Mr. McAneny's testimony on this point, as in general, was extremely vague (*S. M. 584*). He said no application had been made. All he would say, respecting when the application would be made, was "I imagine within the next two or three weeks. It is coupled with the broad subject of our needs for sewage disposal as well" (*S. M. 586*). If we wait for incinerators until defendant builds sewers, none of us may live to see compliance with the decree. None of the city officials take that decree seriously. It imposes upon them no obligations of conscience or mind.

The record discloses a lack of sincere effort to comply with the decree. It shows no valid, or conscientious reason why funds were not available, or could not have been procured, if defendant had sincerely tried to find a way to comply with the decree.

(4)

Reimbursement of expenses due to defendant's failure to comply with the decree should be ordered.

The Master's report (*p. 18*) shows the proven expenditure made by the political subdivisions of plaintiff for the removal of gargage and refuse during the summer of 1933, due to the failure of defendant to comply with this court's decree.

Unfortunately many of the municipalities failed to keep their accounts in a manner that would show such expense separately from other municipal work. Considerable sections of the beach front was cleaned by private persons or associations, whose expense for that purpose was excluded as not within the purview of the order (*S. M. 377*).

Plaintiff is entitled to reimbursement on behalf of its political subdivisions for the money thus expended, and to protection by bond or other security to indemnify against future expenditures of a like nature.

(5)

CONCLUSION.

In conclusion plaintiff submits that this record shows:

1. That four incinerators, of 750 tons daily capacity each, are necessary to enable defendant to comply with the court's decree; that the two under construction could have been provided within the time required in the decree, except for unnecessary delay on the part of defendant;

and that no attempt whatever has been made by defendant to provide the two remaining incinerators necessary for compliance.

2. That defendant had the money at the time for compliance with the decree but failed to so apply it: that if it had not the money when the decree was made, it has not made such effort to obtain it as will excuse its failure to comply.

3. That the nuisance enjoined continues without abatement, and that it never will be abated except under the drastic compulsion of this court.

4. That the conduct of defendant shows a lack of the diligence and good faith which equity and good conscience require in the fulfillment of the court's decree, and which lack amounts to contempt of this court.

5. That defendant should be adjudged in contempt of this court, and be punished accordingly, and that the court should adopt such salutary measures as may be necessary to enforce compliance with its decree at the earliest practicable date.

Respectfully submitted,

WILLIAM A. STEVENS,
Attorney General,
Solicitor of Plaintiff.

DUANE E. MINARD,
Of Counsel.

November 6, 1933.

FILE COPY

MAY 8 1933

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 10—ORIGINAL.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

MOTION FOR LEAVE TO FILE ANSWER AND APPLICATION FOR FURTHER RELIEF AND SUPPORTING BRIEF.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

Notice.

To Hon. William A. Stevens and Hon. Duane E. Minard,
Solicitors for Plaintiff-Petitioner:

Sirs:

Please be advised that on Monday, May 8, 1933, the defendant will apply to the Court for leave to file the annexed answer, application for further relief and supporting brief.

Yours, etc.,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

Motion for Leave to File Answer and for Further Relief.

COMES NOW The City of New York, by its Corporation Counsel, and asks leave of the Court to file the annexed answer and application for further relief.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 13—Original.

STATE OF NEW JERSEY,
Plaintiff,

vs.

THE CITY OF NEW YORK,
Defendant.

Answer to Petition and Prayer for Further Relief.

COMES NOW the defendant, and respectfully shows:

1. At page 15 of the report of the Special Master upon the re-reference herein, the Special Master said:

> "The estimates made by the witnesses do not take into consideration the time that may be lost on account of strikes or unforeseen conditions that may arise beyond the control of the City or the contractors."

2. It was entirely unforeseen at any time during the pendency of this cause before the Court and its Special Master that financial conditions affecting the entire United States of America would change so radically and unfortunately as they have changed. This is particularly true with regard to municipal securities.

3. In The City of New York the funds necessary for the acquisition of sites for and the construction of garbage destructors or incinerators may only be raised through the issue and sale of corporate stock. The provisions of the statutes in that regard are contained in Section 169 of the Greater New York Charter (New York Laws of 1930, Chapter 565).

4. In the defendant City, municipal improvements, such as garbage destructors, must be, and always have been, financed through the issuance and sale of long term corporate stock bonds.

5. The most recent long-term bond sale The City of New York, because of bond market conditions, has been able to hold occurred on March 1, 1931, before the rendition of the decree of this court upon the report of the Special Master herein, and before its final decree herein of December 7, 1931, adverted to in paragraph "7" of the plaintiff's petition.

6. From approximately December 1, 1931, the investment market has been in such bad condition, that the prices offered for bonds of the defendant City have fallen so low as to bar absolutely any long term bond sale, even where the bonds or corporate stock of the defendant City bore interest at the rate of 6% which is the maximum legal rate of interest in the State of New York.

7. The defendant City, prior to December 1, 1931, had outstanding short term corporate stock notes to the

amount of $76,700,000 issued by it to meet contract payments and to pay awards for real property acquired by the City in condemnation proceedings.

8. The corporate stock notes mentioned in the preceding paragraph were issued pursuant to the authority of Section 189 of the Greater New York Charter (New York Laws of 1920, Chapter 713) in anticipation of the sale of long term corporate stock, duly authorized at the time of the issuance of such notes.

9. From about midsummer in the year 1931 to the close of that year the defendant City could only obtain funds for the purposes for which it was required to finance its projects and operations through the sale of the short-term corporate stock notes authorized by Section 189 of the Greater New York Charter and contemplating payment out of the subsequent sale of long-term corporate stock bonds.

10. On or about December 23, 1931, the Comptroller of the defendant City, being, like the other members of the Board of Estimate and Apportionment, gravely concerned as to the inability of the defendant City to raise funds in the bond market, notwithstanding the true excellence of its fundamental financial condition, sought to engage the cooperation and assistance of leading financial houses with a view to enabling the defendant City to market its securities and so provide the funds imperatively needed for past incurred contract and land acquisition liabilities.

11. The conferences of the defendant's Comptroller with the representatives of the aforementioned financial and banking houses brought no successful result. There was, however, sponsored as a result thereof, the adoption by the Legislature of the State of New York of a new section, to wit, Section 189-a of the Greater New York Charter (New York Laws of 1932, Chapter 4) under which the defendant's Comptroller was authorized to issue notes to be known as special corporate stock notes not to exceed at any one time the amount of $200,000,000, which amount would, and did, however, include all outstanding short-term corporate stock notes of the defendant and was to be the utter limitation of the borrowing power of the defendant City, except upon long-term securities.

12. The aforementioned sum of $76,700,000, which was payable within a year from date of issue, was included in the $200,000,000 referred to in the preceding paragraph hereof and the amount of special corporate stock notes made available for use on January 20, 1932, by the aforesaid Section 189a of the Greater New York Charter, was the sum of $123,300,000. Against this limit of $123,300,000 there were, on January 1, 1932, outstanding liabilities for the following:

(a) Liability upon contracts registered in the year 1931 and prior thereto....	$136,745,000
(b) Liability for land acquired by condemnation, title to which had previously legally vested in The City of New York, estimated at.....	52,500,000

13. Nothing will cure, or be capable of curing, the defendant City's inability to engage in projects necessitating the expenditure of capital funds except an ability to negotiate its long term obligations; and this it will continue to be unable to do until the financial condition of the country permits investors to purchase long term obligations. In this connection the attention of the court is invited to the fact that by Section 182 of the Greater New York Charter (New York Laws of 1915, Chapter 308) the defendant City is prohibited from negotiating any of its securities at less than par.

14. In the month of September 1931, and long prior to the entry of the final decree herein, the proper authorities of the defendant City had been engaged in, and had completed the work of preparing plans and specifications for four incinerators and the proposed contracts for each of the said incinerators.

15. These proposed contracts, plans and specifications were, on September 22, 1931, duly presented, as required by the defendant's Charter, to its Board of Estimate and Apportionment for the approval required by law, preliminary to advertising for bids thereon and duly came before its Committee of the Whole on December 15, 1931, by which they were restored to the formal public calendar of the City's Board of Estimate and Apportionment for December 18, 1931.

16. When the matter of the said four contracts came on for public hearing before the defendant's Board of Esti-

mate and Apportionment on December 18, 1931, objectors appeared and in regular course the matter was laid over to January 15, 1932.

17. By January 15, 1932, when the matter of the said four contracts again came on for public hearing before the Board of Estimate and Apportionment of the defendant City, the financial situation hereinbefore mentioned had become so extremely acute that for the purpose of meeting its accrued contract and land purchase obligations, the defendant City found it necessary to advocate the enactment by the State Legislature of the above mentioned Section 189-a of the Greater New York Charter.

18. On January 22, 1932, when the matter of the aforesaid contracts again came on for public hearing before the defendant's Board of Estimate and Apportionment, the general financial situation was even worse than it had theretofore been thought to be, and, it was impossible for the defendant City to enter into new obligations involving the expenditure of capital funds. So dire, indeed, was the situation, that the defendant City has been obliged to discontinue very many public improvements on which construction had been commenced. Amongst the improvements which the City has been so compelled to discontinue are:

A. The construction of the so-called Tri-Borough Bridge to connect the Boroughs of Manhattan, Bronx and Queens, spanning the East and Harlem Rivers. On this project, there had been, theretofore, actually expended by the City of New York a total of $4,000,000. The project was ultimately to cost at completion, a total of $40,000,000.

B. The Mid-Manhattan Tunnel Project, to connect the west side of Manhattan Island with New Jersey, and the east side of Manhattan with the Borough of Queens, making possible one continuous passage for vehicles from the State of New Jersey under the island of Manhattan to Long Island. The City had actually expended or assumed a total of $2,000,000 on preliminary work on this project and up to the time it was abandoned, no definite estimate had been made of its ultimate cost, but it may be conservatively stated to exceed that of the Tri-Borough Bridge.

C. During the 8 or 10 years prior to 1933, the City of New York expended annually from $25,000,000 to $30,000,000 for the erection and equipping of new school buildings and additions to existing school buildings. Commencing in the Spring of 1932, the City of New York entirely suspended the construction of new school buildings and additions to existing buildings.

D. For several years the City of New York has had under consideration the provision of additional sources of water supply from the watershed of the Delaware River, and, in fact, was obliged to litigate the question as to its right to such waters in this Court. The plan contemplating the utilizing of the Delaware waters has been estimated to require an expenditure of $250,000,000 to $300,000,000, and is urgently needed so as to prevent an imminent shortage of water in the City of New York. All work on this project has been suspended and, to date, all authorizations for funds therefor have been either rescinded or refused.

E. Commencing January, 1926, the City of New York laid out comprehensive plans for the relief of congestion in its then existing rapid transit systems and projected what has been called the Independent Subway System. Despite the necessity for completing this Independent System, the City of New York, commencing in 1932, rescinded authorizations then outstanding, and has refused to consider any further authorizations for expenditures of funds to extend said Independent System beyond the so-called Eighth Avenue Line, and the links thereof then completed or partially completed.

F. The advancement of designs or the progress of construction on various types of buildings required for municipal purposes other than those above discussed, such as hospitals and office buildings, has been entirely stopped. The City of New York has on a plot in the Borough of Manhattan, bounded by Centre, Leonard, Worth and Lafayette Streets, a foundation erected for an office building for the Departments of Health, Hospitals and Sanitation, work upon which has been entirely discontinued.

19. It is true as stated in the report of the Special Master upon re-reference, that appropriations have already been provided for incinerators in authorized localities; but appropriations of this nature by the Board of Estimate and Apportionment of The City of New York are merely authorizations to the Comptroller to sell corporate stock for the purpose of raising the moneys appropriated.

20. Resolutions of appropriation merely indicate the purposes for which public funds, when raised, may be spent. They do not indicate that the funds appropriated are in the Treasury of the defendant City.

21. Despite the impossible financial situation outlined above, with no improvement or prospect of improvement for the sale of long term bonds of the City of New York, the defendant's Board of Estimate and Apportionment, in the month of November, 1932, authorized the Sanitary Commission of The City of New York to award contracts for the construction of two incinerating plants, each with a capacity of 750 tons per day of 24 hours, to be located as follows:

Contract A—215th-216th Streets, 9th to 10th Avenue, Manhattan;

Contract B—Zerega Avenue, between Lafayette Avenue and Hermany Avenue, Bronx;

the aggregate cost being $1,409,535, exclusive of plumbing and heating.

22. The aforesaid contracts were duly registered pursuant to Section 149 of the Greater New York Charter, by the Comptroller of The City of New York, and constitute legal obligations of the City.

23. The two above mentioned incinerators will be completed on April 1st, 1934, barring unforeseen contingencies.

24. When completed, these plants operating as it is intended that they shall operate, for twenty-four hours per day on six days in the week, instead of through the sixteen hours per day, which was the basis of the opinion of the experts, upon which the Special Master framed the

recommendations contained in his report on re-reference, will incinerate a daily average of 950 tons of garbage. This will reduce the amount theretofore disposed of at sea from a maximum of 1,200 tons per day to not more than 250 tons per day.

25. At no time during recent years has the minimum daily quantity of garbage disposed of at sea been less than 800 tons per day. It is confidently expected that from and after the date of the completion of the said two garbage incinerators, it will no longer be necessary for the defendant City to dump any garbage at sea.

WHEREFORE, the defendant, The City of New York, prays that the decree of this Court filed herein on the 7th day of December, 1931, be modified by changing from June 1st, 1933, to April 1st, 1934, the date specified in paragraph numbered "I" of the said decree as that upon which its employees and agents and all persons acting under its authority will be enjoined from dumping any garbage or refuse into the ocean or waters of the United States off the coast of the State of New Jersey.

And the defendant will ever pray.

Dated, New York, May 8, 1933.

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant, The City
of New York.

DEFENDANT'S BRIEF IN SUPPORT OF THE FOREGOING APPLICATION.

The fact that the decree herein of December 7, 1931, was entered upon consent is, of itself, convincing evidence of the good faith of the defendant City.

From the facts stated in the petition it is evident that the "unforeseen conditions," to which the Special Master adverted at page 15 of his report upon the re-reference herein, did not contemplate the financial distress which the country at large, very shortly thereafter, has been compelled to endure.

The City of New York, like every other municipality, is restricted as to the manner in which it may raise moneys for public purposes and is also restricted as to the amount of indebtedness which it may incur. Under Article 12, Section 1, of the Constitution of the State of New York it is the duty of the Legislature to restrict the power of the cities of the State to tax, to assess, to borrow money, to contract debts, and to loan their credit.

This power has been duly exercised by the State Legislature, and finds partial expression in Sections 169, 189 and 189a of the Greater New York Charter, to which reference has been made in the foregoing application.

The City of New York has by no means reached the limit of the long-term indebtedness which it may, under the Constitution and Laws of the State of New York, incur. Its debt margin upon long-term obligations exceeds by at least $400,000,000 any existing obligations.

Its inability to borrow money for capital improvements, such as garbage incinerators, is due not to any lack of

capacity on its part to meet its obligations, when and as they accrue, but to the inability of the citizens to lend their moneys for such projects during the present times.

This condition is not peculiar to The City of New York, but exists to an intolerable extent in all of the greater cities of the Nation. In fact, despite their wealth, some cities have been unable to meet past obligations.

It is not to be denied that the defendant City has not completed and will not be able to complete on June 1, 1933, the date when this Court's final decree as at present written becomes effective, the garbage incinerating plants concerning which testimony was offered before the Special Master and to which he adverted in his reports.

If the City could obtain, or could have obtained, the moneys necessary for the erection of the garbage disposal plants referred to in the petition herein and in the reports of the Special Master, it would unequivocally have so done.

In The City of New York, as in other great cities of the country, taxes upon real property, which are the principal bases for the raising of moneys, have, in stupendous figures, not been paid,—to such an extent, indeed, that salaries of municipal officers and employees and State officers, paid out of City funds, have been drastically reduced.

Without such curtailment of the eminently legitimate and necessary cost of conducting the municipal government, it would have been unable, efficiently, to continue, with the result that police and fire protection would be dreadfully diminished, the educational establishment tremendously reduced, and such matters as the care of the sick and relief of the poor entirely discontinued.

The City of New York, like every other municipal corporation, does not exist for profit and has no power to

accumulate funds, during periods of prosperity, which can be applied to necessities in periods of depression. It has only the closely supervised and restricted power of taxation and the power to issue its bonds for the purpose of financing capital improvements.

In the existing state of the securities market the defendant City can find no buyers for its long-term obligations, and, finding no buyers, is unable to convert the special corporate stock notes issued under the authority of Section 189a of the Greater New York Charter, and being so thwarted, cannot issue further short-term corporate stock notes even if it could find buyers therefor.

The situation in which the defendant City finds itself is not of its own creation or of its own neglect. It is due to a financial condition entirely beyond its control and in the creation of which it had no part.

The most unusual financial situation which began, so far as the defendant City is concerned, toward the close of the year 1931, will not have passed by June 1, 1933. The question of how long that situation will continue, not only for the defendant City but for every other municipality in the United States, cannot presently be answered.

The defendant City has been doing and will continue to do all that it is possible for it to do under the present adverse financial conditions, toward complying with the prescriptions of this Court's final decree of December 7, 1931.

It is earnestly desirous of giving its full obedience to the said final decree but for the reasons set forth in the foregoing answer and application, and herein, is unable so to do and is thus compelled to seek the favor of the Court.

In Conclusion.

The defendant City urgently requests that the final decree herein be modified by extending the date upon which it shall become operative from June 1, 1933 to April 1, 1934.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for Defendant.

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BEACH POLLUTION CASE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

10

No. 1 [redacted]iginal. 13

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

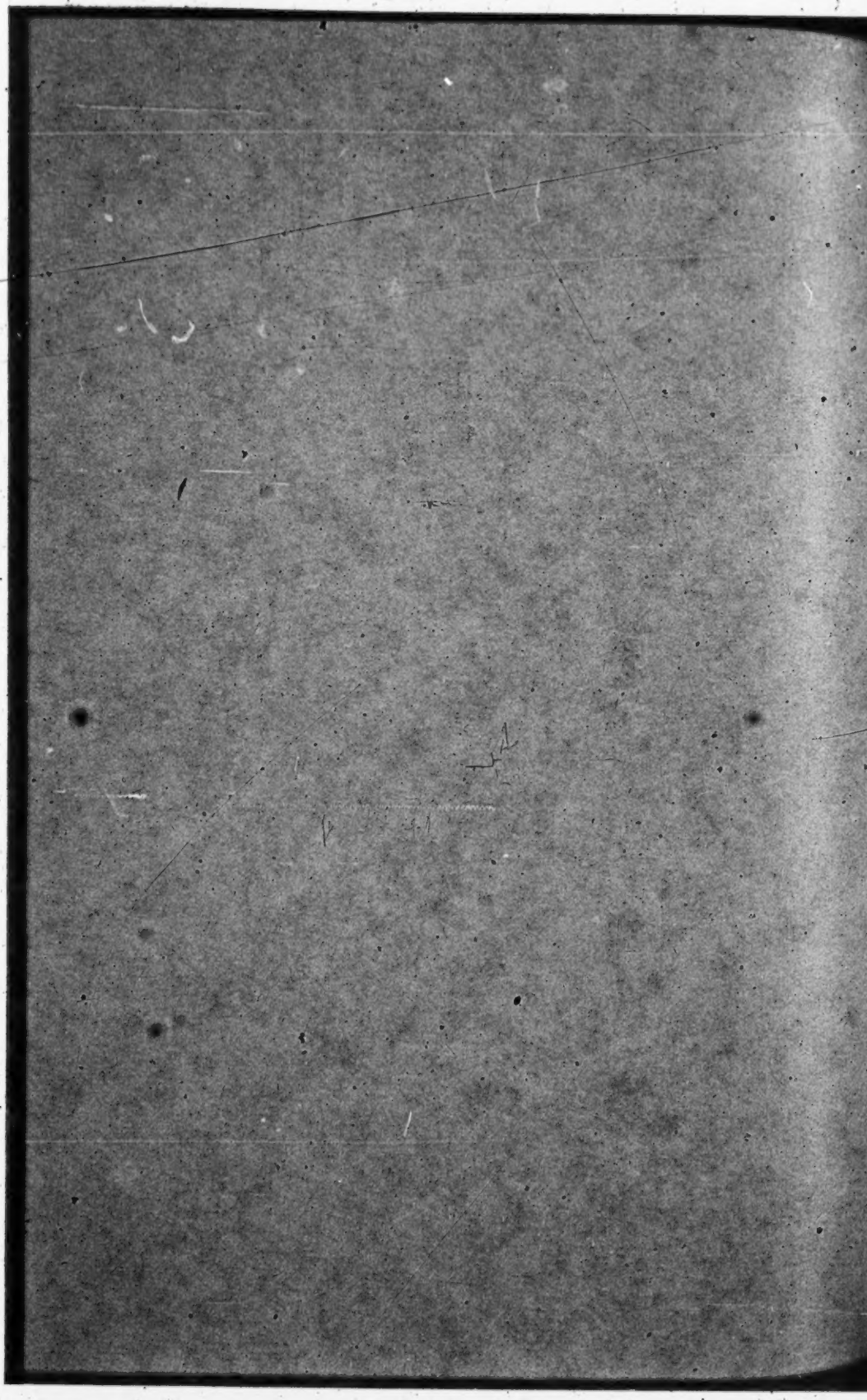
PLAINTIFF'S BRIEF IN SUPPORT OF THE SPECIAL MASTER'S REPORT.

WILLIAM A. STEVENS,
Attorney General,

DUANE E. MINARD,
Assistant Attorney General,
Solicitors for Plaintiff.

April 30, 1931.

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 17, Original.

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW YORK, *Defendant*.

PLAINTIFF'S BRIEF IN SUPPORT OF THE SPECIAL MASTER'S REPORT.

I.

Statement of the Case.

This is an original action brought by the Attorney General in the name of the plaintiff pursuant to a resolution of the Legislature (Exhibit 68).

The complaint alleges that the dumping of garbage and refuse by defendant in the navigable waters of the United States off the coast of plaintiff causes great damage to plaintiff and its citizens in their health, welfare and property, and creates a public nuisance in its waters and on its shores, which it asks this court to restrain. The allegations of the complaint are fully set forth in the Special Master's report (pp. 3-6).

Defendant's original answer was a general denial, but after the testimony was concluded and February 4, 1931 had been fixed for argument before the Special Master, it applied, on February 2, 1931, for, and on

February 24, 1931, obtained leave to file an amended answer.

The amended answer admitted the dumping of garbage and refuse at sea but denied that the places of dumping were within the navigable waters of the United States. It claimed the right to do this under permits issued by the Supervisor of the Harbor of New York under authority of Title 33, United States Code, sections 441, 443, 449, and 451, and alleged that this court had no authority to enjoin such dumping, because it was done on the "high seas."

It alleged, also, that large quantities of garbage, condemned food stuffs, and various materials were dumped both inside and outside New York harbor and in the sea lanes at various points south of New York City by passing steamships, by private contractors under similar permits, and by the United States Navy; that insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park was discharged into the ocean near the beaches of those cities; that it is impossible to determine whether the garbage or offensive material in substantial quantities dumped by defendant is deposited in the waters and on the beaches of plaintiff, or in greater quantities than that deposited at sea by the other agencies mentioned; and that, therefore, the damages suffered by plaintiff and its citizens is not chargeable to defendant.

The defenses and allegations of the amended answer are fully set forth in the Special Master's report (pp. 7-9).

Chronology.

The complaint was filed May 13, 1929; Answer filed June 10, 1929; Reply filed October 7, 1929; Order of Reference entered October 14, 1929; hearings held De-

cember 11-13, 1929, January 15-17, 22-24, March 24, April 8, and December 5, 1930; application made February 2, 1931, for leave to file an amended answer; briefs filed and argument heard before the Special Master February 4, 1931; application granted and amended answer filed February 24, 1931; Special Master's report filed March 20, 1931.

Exceptions.

Plaintiff has filed no exceptions to the Special Master's report, but defendant has filed 94 exceptions thereto, arranged under six general headings, which will be followed in this brief.

Record.

The parties have stipulated with permission of the court, that the record of the testimony shall consist of a printed "Abstract of Testimony" which plaintiff prepared for the use of the Special Master, supplemented by that taken at a subsequent hearing held December 5, 1930, and that either party may refer, in briefs or on argument, to the exhibits on file, without printing the same as a part of the record, subject to objections thereto, and to print in, or as an appendix to, its brief any part or all of any of such exhibits.

II.

Jurisdiction.

Jurisdiction is conferred by Article III, Section 2 of the Constitution of the United States, and Section 341, Title 28, U. S. C. A. (p. 171), and has been frequently sustained. *Missouri* v. *Illinois*, 180 U. S. 208; *New York* v. *New Jersey*, 256 U. S. 296; *Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230; *Wisconsin v. City of Duluth and the Northern Pacific Railroad Co.*, 96 U. S. 379.

III.

Summary of the Argument.

(1) This Court has jurisdiction to grant the relief demanded in the bill of complaint because, among other things, (a) the suit is one to protect quasi-sovereign rights of the plaintiff; (b) because the defendant is before the court; and (c) the property affected is within the United States.

(2) Garbage and refuse in large quantities dumped by the defendant in the Atlantic Ocean more than a marine league from the shores of the waters of the plaintiff is driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance, to the great injury of the plaintiff's rights and property.

(3) Compliance by the defendant with the provisions of the Act of Congress of June 29, 1888 (29 Stat. 209) as amended, and the permits to dump garbage in the Atlantic Ocean at a distance in excess of one marine league from the shores of New Jersey issued by the Supervisor of the Harbor of New York in accordance with said Act, do not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

(4) Such garbage and refuse as reaches the plaintiff's shores from the dumpings by coastwise and other vessels and from other sources is negligible in comparison with that dumped by defendant and reaching plaintiff's shores and constitutes no defense to plaintiff's complaint.

(5) Particular exceptions to the Special Master's report and to his failure to find facts and make conclusions of law as requested by defendant and in support of its contention that on all of the evidence, a case for

equitable relief in favor of the plaintiff, was not made out.

(6) Recommendations for decree.

IV.

ARGUMENT.

(1)

This Court has jurisdiction to grant the relief demanded in the bill of complaint because, among other things, (a) the suit is one to protect quasi sovereign rights of the plaintiff; (b) because the defendant is before the Court; and (c) the property affected is within the United States.

Under this heading defendant groups its first eleven exceptions, which challenge the Master's findings of a justiciable controversy and of jurisdiction.

(a)

The suit is one to protect quasi-sovereign rights of the plaintiff.

A justiciable controversy is succintly defined by Mr. Justice Brewer as follows:

> "Clearly this controversy is one of a justiciable nature: The right to the flow of a stream is one recognized at common law, for a trespass on which a cause of action existed." *Kansas v. Colorado,* 206 U. S. 46, 85.

The principal issue raised by the pleadings is whether the acts complained of create a public nuisance on the lands and in waters of the plaintiff. At common law a cause of action existed for damages resulting from either a public or private nuisance. *Chitty's Pleading,* 136, 142; 3 *Bl. Com.* 216, and either was restrainable in the Court of Chancery. 2 *Daniell's Chy. Pl. & Pr.,*

1739-40; 2 *Story's Eq. Jurisp.* Sec. 1248. A controversy of a justiciable nature is presented. (Cases cited under "Jurisdiction," Part II of this brief).

The complaint alleges, *inter alia*:

> "1. The plaintiff is a State of the Union * * * and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution, including the power and duty to protect and preserve to its citizens certain natural and unalienable rights, including the acquisition, possession and protection of property and of pursuing and obtaining safety and happiness. This suit is instituted * * * for the use and benefit of the plaintiff as the owner of the property hereinafter mentioned and also as *parens patriae* for the use and benefit of its citizens. * * *.
>
> "4. From Atlantic Highlands southerly to Cape May, a distance of more than 100 miles, the easterly side of the State of New Jersey borders on the Atlantic Ocean. The portion of this Ocean frontage particularly affected by the acts of the defendant hereinafter complained of extends from Atlantic Highlands to Beach Haven, a distance of more than fifty miles, and is occupied by a continuous succession of adjoining municipalities, which, by reason of their broad and gently sloping beaches are adapted to, and their inhabitants are engaged in and rely for their livelihood chiefly upon, the business of maintaining summer resorts, where great numbers of people of all classes and conditions congregate from various parts of the United States in the pursuit of rest, recreation and pleasure.
>
> 5. The plaintiff possesses the sovereign ownership of lands along the shore and under the waters of the Atlantic Ocean below high water mark throughout its beach front within its territorial limits, and the use of said beaches and the waters adjacent thereto are common to all the people of the State."

The court will take judicial notice of the boundaries and territorial limits of the plaintiff, and that it borders

on the Atlantic Ocean on its eastern side. *Brown v. Piper*, 91 U. S. 37.

Annexed hereto as "Exhibit A," is the map of the coastal area involved in this suit which was annexed to the complaint. The boundary line between the states of New Jersey and New York is shown thereon by a broken line, which runs through the words "Raritan Bay." From that boundary southerly the State of New Jersey borders on the Atlantic Ocean for a distance of about 100 miles to Cape May.

The beach front affected by the subject matter of this suit is about 70 miles long, and extends from Sandy Hook and Beach Haven, embracing twenty-nine consecutive municipalities as follows:

Highlands
Sea Bright
Monmouth Beach
Long Branch
Deal
Allenhurst
Asbury Park
Ocean Grove
Bradley Beach
Neptune City
Avon
Belmar
Spring Lake
Manasquan
Sea Girt
Brielle
Point Pleasant
Bay Head
Mantoloking
Lavallette
Seaside Heights
Seaside Park
Township of Berkeley
Barnegat City
High Point
Surf City
Ship Bottom-Beach Arlington
Long Beach
Beach Haven

all of which are seashore resorts, possessing the sole attraction of the sea and beach for fishing, boating, bathing and other recreational purposes. Their assessed valuations in 1929 was $139,599,751.00 (Pl. Ex. 69, R. 100).

Proprietary Rights.

Plaintiff has title to the shore, between high and low water marks, and to the bed and waters of the marginal sea, below low water mark, adjacent thereto, within its territorial limits, according to the rule of the common law and the law of nations, by virtue of the Definitive Treaty of Peace between the United States and Great Britain, 1783, Article I (1 *Malloy's Treaties, &c.* 587), and its Constitutions of July 2, 1776, Article XXII (1 *N. J. Comp Stat.* xxxii), and June 29, 1844, Article X, par. 1 (1 *N. J. Comp Stat.* xlvii). *Hist. and Law of the Foreshore and Seashore, Moore & Hall,* 3d ed. (*Hale's First Treatise*) pp. 347 358, 367, (*Hale's de jure Maris*) 376, 379, 380; *Angell on Tide Waters,* pp. 19-37, 44; 3 *Kent's Com.* 427; *Gould on Waters,* Secs. 2-4, 32; *Farnham on Waters and Water Rights, Secs.* 2-9, 10a, 11, 37a; 21 *Am. & Eng. Ency.* (2d ed.) 430; *Hardin v. Jordan,* 140 U. S. 371; *Martin* v. *Waddell,* 16 Peters 367, 407; *Arnold* v. *Mundy,* 6 N. J. Law 1, 14, 15, 94; *Gough* v. *Bell,* 22 N. J. Law 441, 455, 472; *Affirmed* 23 N. J. Law 624, 654; *Hoboken* v. *Penn R. Co.,* 124 U. S. 656, 690; *Russel* v. *Jersey Associates,* 15 How. 432; *Rundle v. D. & R. Canal Co.,* 14 How. 80; *Manchester* v. *Mass.,* 139 U. S. 240, 258, 260, 264; *Cunard Steamship Co.* v. *Mellon,* 262 U. S. 100; *N. J. Pamphlet Laws,* 1906, p. 542; *Corfield* v. *Coryell,* 6 Fed. Cas. 546, 549.

Of this beach frontage of approximately 70 miles, plaintiff has granted to its citizens 64,818 lineal feet and to its municipalities 13,270. Plaintiff retains title to 285,055 lineal feet (Exhibit 346) in which, together with all the bed and waters of the marginal sea below low water line adjacent to its entire coastline, it has a direct proprietary interest.

Plaintiff, as quasi-sovereign, has a substantial interest, independent of and behind the title of its citizens, in

the land and seashore, which it did not surrender under the federal constitution, and which it can protect in this court. *Georgia* v. *Tenn. Copper Co.*, 206 U. S. 230.

Parens Patriae.

Plaintiff sues also in the character of *parens patriae*.

Grants of riparian lands to private parties are authorized by act of the legislature of New Jersey, approved March 21, 1871 (N. J. P. L., p. 44), reading as follows:

> "Sec. 1. That any riparian owner on tide-waters in this state who is desirous to obtain a lease, grant or conveyance from the state of New Jersey of any lands under water in front of his lands, may apply to the commissioners appointed under the act to which this is a supplement and the supplements thereto, who may make such lease, grant or conveyance with due regard to the interests of navigation, upon such compensation therefor, to be paid to the state of New Jersey, as shall be determined by said commissioners, which lease, conveyance or grant shall be executed as directed in the act to which this is a supplement and the supplements thereto, and shall vest all the rights of the state in said lands in said lessee or grantee" (Rev., 1877, p. 987; 4 *N. J. Comp. Stat.*, 4390).

Grants of riparian lands to municipalities are authorized by Chapter 202 (P. L. 1903, p. 387), reading as follows:

> "Sec. 1. Whenever any public park has been or shall hereafter be laid out or provided for by ordinance of any city or other municipality, under the authority of any act of the legislature of this state, along or fronting upon any of the tide waters of this state, and whenever any streets or highways shall extend to said tide waters, such municipality may apply through its legislative body to the commissioners appointed under the act to which this is a further supplement, for a grant or conveyance to such city or municipality of the lands under water

within the limits of said public park, and of the land in front of said streets or highways; such grant to contain a provision that any land under water granted or conveyed for park uses shall be kept and maintained as an open public park or place for public resort and recreation, and that no building or other structures shall be erected on such park or on the lands under water so granted and conveyed inconsistent with its use as a public park or place for public resort and recreation; provided, however, that public walks and drives may be constructed along or upon any portion of the land so granted or conveyed" (4 *N. J. Comp. Stat.*, 4397).

"Such lands may be granted to a municipality constituting a political division of the state, for the promotion of the commercial prosperity of the municipality and consequently of the people of the state." 21 *Am. & Eng. Ency.* (2d ed.), 436.

Such grants convey title subject to all rights of the public therein.

The rights of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness are guaranteed to the citizens of plaintiff by its constitution (Art. I, par. 1). The right and duty to protect them in those rights are attributes and obligations of sovereignty under our system of government. *Fontain* v. *Ravenel*, 58 U. S. 369, 393; *Angell on Tide Waters*, p. 23; *Georgia* v. *Tenn. Copper Co.*, 206 U. S. 230; *New York* v. *New Jersey*, 256 U. S. 296; *Missouri* v. *Illinois*, 180 U. S. 208; s. c. 200 U. S. 496.

On behalf of the municipalities and citizens who own shore frontage under state grants; the inhabitants of the municipalities involved and others who use the sea and the beaches for purposes of recreation; and those who are engaged in enterprises for the entertainment of visitors, plaintiff has an interest in the subject matter of this suit in its character of *parens patriae*, as the guard-

ian and protector of the property, health and welfare of its inhabitants. *Hampton* v. *Watson* (89 S. E. 81; 119 Va. 95; L. R. A. 1916 F. 189); *Angell on Tide Waters*, p. 27.

It therefore appears that the suit is one to protect the quasi-sovereign rights of the plaintiff.

(b)

The Defendant is before the Court.

Defendant raised no question of jurisdiction in its original answer. It was not until two days before the argument before the Special Master that it raised that question, in an application to amend its answer. Having accepted that jurisdiction throughout the proceedings of more than a year, and entered into its defense at large, it cannot now raise the question. 1 *Daniell's Chy. Pl. & Pr.* (*Am. Ed.*) 579.

However, let us consider the question on its merits. Defendant's contention is that, because it dumps its garbage and refuse on the "high seas," more than three miles from shore, its acts are committed outside the jurisdiction of the United States. At the same time it sets up, as its "First Defense," that it dumps its garbage at sea under permits authorized by the Act of Congress of June 29, 1888 (25 Stat. 209), amended, at places designed in such permits "and not within the navigable waters of * * * the United States" (*Am. Ans.* par. fifth, p. 8). These two contentions are legally inconsistent, and cannot be legally united in defendant. *Bouvier's L. Dict., Bald. Rev.*, ("*Incompatible*") p. 533.

In *United States* v. *Various Tugs*, 225 Fed. 505, the United States District Court for the Southern District of New York held that the jurisdiction of Congress to protect the harbors "and adjacent channels and waters, may

be exercised beyond a marine league from shore." If defendant places any reliance upon the permits, or if, by soliciting those permits it places a practical construction upon the Federal statutes which necessarily involves jurisdiction at the dumping grounds, it cannot say that the jurisdiction of this court is not co-extensive with that of Congress or the Supervisor of the Harbor of New York?

Congress, and the Supervisor of the Harbor, have exercised, since 1888, and with defendant's acquiescence since 1918, an unchallenged, or sustained jurisdiction, over the dumping grounds as navigable waters of the United States. Defendant cannot now challenge that jurisdiction. *Prigg* v. *Pennsylvania,* 16 Peters 539, 567.

Like the Court of Chancery in England, this court is a superior court of general jurisdiction. It is insufficient to deny jurisdiction. It is necessary to show what court has jurisdiction to give a complete remedy. Courts of equity assume and exercise their powers over subject matters outside their territorial jurisdiction, if the parties are within their jurisdiction, "for a Court of Equity *agit in personam,* and may give effect to its decree by constraining the person or property of the defendant till he perform it." 1 *Daniell's Chy. Pl. & Pr.,* 652-3; 1 *Story's Eq. Jurisp.* Secs. 90-1; *Massie* v. *Watts,* 6 Cranch 148, 158; *Penn* v. *Lord Baltimore,* 1 Vezey 444; *Hart* v. *Sansom,* 110 U. S. 151, 154.

If the defendant's contention is sound a strange situation is presented. If it can carry the garbage beyond the three-mile limit it may dump it regardless of the damage caused on the adjacent shores or the extent of the nuisance thereby created. By the same token it might go to the same place and fire a cannon toward, regardless of how much damage it did on, the shore. Plaintiff would have no remedy. Equity suffers no wrong to be without a remedy. 1 *Story's Eq. Jurisp.,* Sec. 94.

(c)

The property affected is within the United States.

The Court will take judicial notice that the shores and the marginal sea of plaintiff are within the United States. *Pearcy v. Stranahan,* 205 U. S. 257.

As will appear later, defendant was never in ignorance of the fact that plaintiff's waters and shores were affected by the garbage and refuse dumped by it at sea.

Justiciable Controversy and Jurisdiction.

The findings of the Special Master of the existence of a justiciable controversy and of the jurisdiction of this court is amply sustained by the facts and the law.

(2)

Garbage and refuse in large quantities dumped by the defendant in the Atlantic Ocean more than a marine league from the shores of the waters of the plaintiff is driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance to the great injury of the plaintiff's rights and property.

Under this heading defendant has grouped its exceptions 12 to 43, inclusive, which challenge the Master's findings that defendant's dumping of garbage creates a public nuisance in the waters and on the shores of the plaintiff.

Legal Rights.

The primary uses of the sea are navigation and fishery (*Gould on Waters,* 1). The right of fishery within one marine league of the shore vests exclusively in the people of the adjacent state. 1 *Moore Int. L. Dig.* 717, 718, 719; 1 *Farnham, Waters and Water Rights,* p. 9; *Corfield v.*

Coryell, 6 Fed. Cases 546. The free use of the ocean, for navigation and fishing is common to all mankind (1 *Kent Com.* 27, 3 *Kent* 410, 412, 414, 416; *Martin v. Waddell's Lessee,* 16 Peters 367).

The most valuable perquisite of the exclusive ownership of water is the benefit of fisheries therein.

The free use of the seas is, however, limited by the proviso that there shall be no interference with the equal rights of others. *Sic utere tuo ut alienum non laedas. Angell on Tide Waters,* p. 15. *Gould on Waters,* Secs. 17, 21, 86, 87; *Farnham on Waters and Water Rights,* Secs. 1, 23.

The public right of fishery on the shore and in the sea, is second only to navigation in importance and value. It provides the sustenance which Lord Hale mentions as one of the principal reasons for sovereign title to the marginal sea. *Hardin* v. *Jordan,* 140 U. S. 371, 381; *Arnold v. Mundy,* 6 N. J. L. 1, 14, 94; 1 *Moore Int. L. Dig.* 699; 21 *Am. & Eng. Ency.* (2nd Ed.) 439; *History and Law of the Foreshore and Sea Shore* (*Moore & Hall,* 3rd Ed.); *Hale's DeJure Maris,* 384, 385, 669, 850; *Angell on Tide Waters,* pp. 20, 22-24, 124-5, 132; 3 *Kent's Com.* 412; 13 *Am. & Eng. Ency.* (2nd Ed.), pp. 556, 559, 562, 565; *Corfield v. Coryell,* 6 Fed. Cas. 546, 549, 551; *Paul v. Hazelton,* 37 N. J. Law 106; *Smith v. Maryland,* 59 U. S. 71.

The most extensive use of plaintiff's seashore is for surf bathing purposes. The common right of bathing on the public waters has ancient recognition and is supported by eminent authorities. *Blundell* v. *Cotterall,* 5 B. & A. 268; *Angell on Tide Waters,* 17-18, 28-35, 192; *Halls Essays on Rights of Crown in Seashore* (3d Ed.) 523, 542; *Gould on Waters* (3d Ed.) Sec. 26; *Farnham on Waters and Water Rights,* Sec. 37; 21 *Am. & Eng. Ency.* (2d Ed.) 439.

Garbage and Refuse Dumped at Sea.

Defendant admits that for many years it has dumped the garbage and some refuse in the Atlantic Ocean (Amended answer, p. 8). Its Exhibit No. 12 shows the following quantities:

Year	*Cubic Yards*
1925	1,517,934
1926	1,303,119
1927	1,219,416
1928	1,378,572
1929	1,478,165

The average weight of New York City garbage is 1150 lbs. per cubic yard. (*"Collection and Disposal of Municipal Refuse," Hering & Greeley,* McGraw-Hill Book Co., 1921, p. 46.) Translated into tons, the amount dumped in 1929 equals 849,945 tons, or about 2833 tons per working day. During the summer of 1929 defendant dumped as high as 192,000 cubic yards a month at sea (R. 580).

Prior to 1896 defendant dumped its garbage and refuse at sea. The practice was discontinued from that year until 1903 when it was resumed until 1906. From 1906 until 1917 garbage and refuse were handled in reduction plants on Barren Island and Staten Island (Exhibit 347, p. 7; R. 566-7).

The present practice of dumping garbage and refuse at sea began in August, 1917, when the reduction plant at Barren Island burned (Pl. Exhibits 298; 324, p. 1896) and the quantity was increased in November, 1918, when the reduction plant at Staten Island ceased operation (Pl. Ex. 325, pp. 1997-8). When the Barren Island plant burned, the Supervisor of the Port, "At the request of the New York City Commissioner of Street Cleaning and at the urgent solicitation of the Commissioner of Health," issued permits for dumping of garbage at sea "as a tem-

porary measure, to continue for two or three months only." (Pl. Ex. 326, pp. 1993-4.) The "urgent solicitation of the Commissioner of Health" referred to, was a letter from Dr. Copeland to the Supervisor of the Harbor, dated August 8, 1918, which described "a very serious situation, and we hope it will not long continue. * * * but I want you to understand that we do not contemplate any permanent use of so inadequate a system. It is simply a temporary expedient to bridge over an emergency." (Pl. Ex. 298; R. 449.) The "request of the New York City Commissioner of Street Cleaning" referred to was a letter dated August 17, 1918, from A. B. McStay to the Supervisor of the Harbor requesting "that a temporary permit be granted for dumping of the said material (garbage) at sea until about the 15th of September" (Pl. Ex. 298, R. 450).

No other means having been provided in the meantime, the Secretary of the defendant's Department of Health wrote to the Supervisor of the Port of New York on October 5, 1918, stating "The City of New York is faced with an acute situation approximating a public nuisance in relation to its garbage disposal.

* * * * * * * * *

The City of New York is now in the throes of a so-called 'influenza' epidemic * * *.

May we request you, therefore, to grant permission * * * to take scows of garbage to sea and dump same * * * until such time, in the near future, when New York City shall be able to make other provision for the disposal of its garbage?

We thank you for your consideration in this matter and trust that you may find it possible to assist the City of New York in this emergency" (Pl. Ex. 298; R. 450).

The practice thus began as a "temporary expedient to bridge over an emergency," has continued to the present day, with constantly increasing deposits of garbage at sea.

Official Objections.

In 1907, three distinguished engineers, H. DeB. Parsons, Rudolph Hering and Samuel Whinnery, were appointed by Mayor McClelland of New York City to make an investigation and report on an improved and more effective system of street cleaning and waste disposal. The following is an extract from their report:

"Dumping at Sea.

> All the refuse collections could be dumped into the Atlantic Ocean, *but unfortunately the least harmful material sinks and the foulest floats, so that much of the floatable mass will be scattered along the beaches, through the action of current and wind. This fouling of the beaches creates a nuisance that the public should not be asked to tolerate.* The cost of sending the scows so far to sea that there would be no danger of fouling the beaches, and the delays and interruptions caused by storms and ice, forbid the use of this plan. *The dumping of refuse at sea should not be resorted to except in cases of emergency, when the period of such sea dumping will be of short duration."* (Italics ours.) Exhibit 346; p. 100, R. 656.)

In 1921 the subject of the collection and disposal of city waste was referred by Mayor Hylan to a committee of ten heads of city departments, including Dr. Copeland, Commissioner of Health. Their report includes the following statements:

> (p. 5) "Since October 2nd, 1918, all garbage from the Boroughs of Manhattan, The Bronx and Brooklyn has been disposed of by dumping at sea."
>
> (p. 10) "The greatest objection to the present system of disposing of waste material is in connection with the method now being used for getting rid of garbage, which is both unsanitary and uneconomical.

> * * *. Aside, however, from the question of cost, it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent, if they do not openly object to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal." (Exhibit 347; R. 657.)

Mr. Kenneth Allen, Sanitary Engineer of defendant, in a paper published in the "Proceedings of American Institute of Civil Engineering," November, 1926, stated:

> * * * "but the floating refuse is unsightly, and with winds in the quarter of the southeast, there is always the probability of its reaching the shore and fouling the beaches" (R. 658).

and in an article, published in "Municipal Sanitation," January, 1930, page 16, entitled "How New York Handles Her Garbage and Rubbish Problem," Mr. Allen states:

> "Many complaints have been received from owners and lessees of Long Island and New Jersey bathing beaches, of rubbish and garbage which drifts at times to the shore and strand there." (R. 658.)

The annual reports of the Supervisor of the Harbor to the Secretary of War, and incorporated in his annual reports to Congress, contain many references to the objectionable features of dumping of garbage at sea; some of which are as follows:

> "Garbage deposited at sea, no matter what the distance from shore, is apt to wash up on the beaches. the operation is likewise expensive. It would be an advantage to the neighborhood of the beaches to secure legislation against such practice, and to the city to dispose of its garbage in sanitary and unobjectionable purifiers" (Plaintiff's Exhibit 325, pp. 1997, 1998).

This statement from the report of 1919 is repeated each year in the annual reports of the Supervisor of the Harbor from 1919 to 1929, inclusive (Pl. Exhibits 226, pp. 1993, 1994; 327, p. 2016; 328, p. 2135; 329, p. 1980; 330, p. 1979; 331, p. 1894; 332, pp. 1892, 1893; 333, p: 1915; 334, p. 2013; 335, pp. 2080, 2081).

The following is a statement made in 1930 by Captain Walter S. Anderson, Supervisor of the Harbor:

> "Garbage is a sore subject. The War Department has for a good many years, directly and by the supervisor, urged New York City to provide other disposition of its garbage and refuse than by dumping it at sea." (*U. S. Naval Institute Proceedings, Vol. No. 56, No. 7, Whole No. 329, July,* 1930, *p.* 577.)

The Supervisor's reports also show that as early as 1920 he had "frequently discussed with the city concerning the question of a suitable alternate plan of disposing of such material." (Pl. Exhibit 326, p. 1994); that the designated dumping grounds were at times changed "to obviate the complaints from the beach resorts of New Jersey and Long Island in regard to contamination from this refuse" (Pl. Ex. 331, p. 1894); and that "many complaints have been received from owners of property and from visitors along the New Jersey coast of rubbish and garbage coming in on the beaches, especially during northeast storms and protracted periods of easterly winds." (Pl. Ex. 335, p. 2081.)

Defendant promised the United States Government in 1921 to eliminate dumping garbage at sea. It received complaints from garbage reaching the beaches on Long Island and in New Jersey, (R. 578).

In 1923 citizens and public officials of shore municipalities of New Jersey and Long Island joined in the organization of the "National Coast Anti-Pollution League" for the purpose of combatting the public nuisance created by defendant's dumping of garbage at sea. The minutes of

two of its meetings; one held at Asbury Park, N. J., on August 23, 1923, and another held at Long Beach, N. Y., on September 19, 1923, were offered in evidence as Pl. Exs. 258 and 257, respectively.

Plaintiff's Exhibit 298 contains a statement, with accompanying correspondence, reviewing the efforts of plaintiff's Governor, George S. Silzer, during the years 1923 to 1925, inclusive, to procure, by negotiations with the defendant and complaints to the War Department, some relief from defendant's garbage nuisance (R. 445-469). Among that data are a letter (Sept. 10, 1923) from the Secretary of War, stating that only temporary permission was given "on the understanding that the practice of dumping at sea was regarded as *highly objectionable* and that the city was expected to provide other methods of disposal as soon as possible"; a letter (Dec. 18, 1918) from the Supervisor of the Port to Mayor Hylan of New York City, referring to previous experience with dumping garbage at sea and stating "I feel that I should not be called upon to jeopardize the health of residents and sanitary conditions of the beaches along Long Island and New Jersey coast by modification of the conditions as to deposit of such *offensive material* as at present in operation * * * As I have already stated to you in my previous communication, the deposit of this material at the mouth of the harbor *is most objectionable from every point of view"*; and a letter (July 9, 1925) from the Secretary of War stating "The objectionable features of which you speak are appreciated, and I am urging the Mayor of the City of New York to use his influence in the matter of providing other means of garbage disposal." (Italics ours.)

Plaintiff's Exhibit 299 contains a statement, with accompanying correspondence, reviewing the efforts of plaintiff's Governor, A. Harry Moore, during the years 1926 to 1928, inclusive, in the same direction. (R.469-472.) Among the data included are a letter (July 1, 1926) from the Su-

pervisor of the harbor stating that the only solution of the problem is the erection of incinerators to dispose of the garbage without dumping at sea. "Constant pressure is being brought to bear on the municipal authorities"; a letter from the Secretary of War stating that he had instructed the Supervisor of the Harbor "to take necessary action to insure that none of the New York City garbage reaches the New Jersey coast" and also that he had called the attention of the Mayor of defendant to the "objectionable features of this method of garbage disposal and the importance of the early completion * * * of incinerators * * *"; a letter (July 18, 1927) from the Acting Secretary of War, stating:

> "As you know the Federal laws prohibit the discharge of refuse matter into the navigable waters of the United States are primarily intended to protect navigation, being based upon the power reserved to Congress by the commerce clause of the Constitution to regulate and protect interstate and foreign commerce. Accordingly, this Department does not consider that it is authorized to control the discharge of refuse matter which has no injurious effect upon navigation, but is harmful merely on account of causing objectionable deposits on bathing beaches or other property."
>
> * * * * * * *
>
> "The War Department has communicated several times with the Mayor of New York urging early completion of this program and, while it seems that the Department has done everything it can to improve the situation, it will again call the matter to the attention of the proper officials of New York."

Plaintiff's Exhibit 336 is a letter dated July 9, 1925, from the Acting Secretary of War to Mayor Hylan of New York City, reading as follows:

> "Referring to the present practice of the City of New York of disposing of garbage by dumping it at sea outside of Sandy Hook, I would inform you that the Governor of the State of New Jersey has protested

to the Department against the continuance of such dumping as a nuisance, a detriment to health, and, as in many cases, almost destroying beaches both of New York and New Jersey for bathing purposes.

As you are doubtless aware, deposits of this kind are forbidden by the Act of Congress approved June 29, 1888, as amended by Section 3 of the River and Harbor Act of August 18, 1894, excepting under authority of a permit granted by the Supervisor of the Harbor.

That official gave permission for such dumping as an emergency measure soon after the destruction of the Barren Island Garbage reduction plant in 1917. The action was on the understanding that the city would immediately take steps to dispense with the practice. It appears, however, that it has been continued to the present time, and that there has been considerable delay in the completion of other means of disposal.

In view of the representations made to the Department by the Governor of New Jersey and others concerning the objectionable features of such dumping, I feel constrained to advise the Supervisor that steps must be taken to terminate the privilege as soon as possible, and I wish to ask that you will urge upon the proper city officials the necessity of promptly taking action to dispose of garbage othewise than by dumping at sea."

Plaintiff's Exhibit 337 is a letter dated July 18, 1927, from the Acting Secretary of War to Mayor Walker of New York City, reading as follows:

"Reference is made to previous communications from this Department urging that the City's program of construction of garbage incinerators be pressed to completion as rapidly as possible.

The Department is again receiving numerous protests against the present method of disposing of New York City garbage by dumping at sea and I desire, therefore, to renew at this time the suggestion that every possible effort be made by the City to expedite the completion of sufficient incinerators to dispose of all its garbage so that this objectionable dumping may be discontinued."

About 13 years ago Dr. Copeland, Health Commissioner of New York City, came to Deal to attend a meeting held to do something about the garbage. At that time Dr. Copeland stated that the city was building incinerators and he promised to take the matter up with Mayor Hylan but that was all the citizens of Deal ever heard of it (R. 240). The officials of Belmar complained to the War Department; the reply from that department stated it was trying to do all it could to bring relief. (R. 257-8).

On four or five occasions during the past four years inspectors from defendant's Street Cleaning Department have visited the beach at Long Branch to inspect the garbage accumulations there. One of those inspectors who came in August, 1929, told Mr. Porter, who operates a swimming pool at Long Branch, that he had travelled all the way up the coast and had found the same conditions all the way up. There was garbage on the beaches (R. 320).

Governor Larson's testimony shows that the pledge to clean up the beaches of New Jersey by stopping the nuisance of garbage from New York was in the Republican platforms of New Jersey every year from 1922 to 1929, both inclusive, and in the Democratic platforms of New Jersey for four of those years. It was discussed in annual messages of Governor Silzer in 1924 and 1926; of Governor Moore in 1927; and of Governor Larson in 1929. It was the subject of joint resolutions of the legislature in 1927, 1928 and 1929 (Plaintiff's Exhibits 66, 67 and 68). This suit was brought pursuant to the instructions of the legislature contained in the resolution of 1929. (R. 98-101.)

The Proof.

Appendix "B" to this brief gives a list of 263 different kinds of articles identified on the garbage scows, in the sea and on the shore, connected up between the scows and the shore, with page references to each place in the record where each article is mentioned. The letters "N. Y." after a page number means that at that place in the record that particular article is identified as having come in the garbage from New York City. To avoid tedious repetition these articles will be referred to by the general term "Garbage."

Two hundred and twelve witnesses testified, and three hundred and forty-seven exhibits were offered, on behalf of the plaintiff.

An alphabetical list of the witnesses, with page references to their testimony, both in the stenographer's minutes and the printed record, and a descriptive list of the exhibits with like page references; are printed at the beginning of the record (pp. i-xxii).

Dumping and Drifting of Garbage.

During the summer of 1929 Mr. Smack made a special study of the garbage situation on beaches and at sea. With Gustave Holgarson and James Hall as members of his crew, he went out on thirty-four different occasions to observe where the New York City garbage scows dumped their garbage and what it contained (R. 13). On fourteen of these occasions they were close by when the scows dumped and they deposited postcards in bottles, self-addressed and stamped, bearing a request for the name of the finder, with place and date of finding, and that it be mailed. They were addressed to Mr. Smack (R. 7). Sixty-one of these cards came back by mail from finders on beaches from Long Island, New Jersey and New England.

On May 22, 1929, he observed the largest and foulest garbage dump that he had seen. Three loaded scows dumped and some other loaded scows were going in the same direction. The returning scows left a trail of garbage in the sea after them. He followed the trail, for two miles, to the dumping place where he found garbage strewn over the surface of the sea for an area seven miles long and two miles wide (R. 9, 14). He was present when two other scows were dumped that day. Piles of garbage remained along the ridge of the scows which dropped off into the sea. These scows bore the initials D. S. C., representing the Department of Street Cleaning of the City of New York and another identification letter which was used in the place of numbers.

On June 30, 1929, he saw three New York City scows dump garbage eighteen miles southeast by east of Scotland Light. He ran into the mass while the dumping was in progress. In addition to the body of a perfectly formed child, the garbage contained a great many different articles which are enumerated in a list he made at the time and read into the record (R. 10). They are included in Appendix "B." That list tallies with the articles enumerated by other witnesses who testified to conditions on the shore. The different kind of articles contained in the garbage in the scows, in the water and on the shore are so numerous and some of them are of a nature and condition so disgusting and revolting that they will not be separately mentioned.

On that date Smack saw a number of scows dumped. Garrett Johnson took pictures, which were offered in evidence and identified by Johnson and Smack as being representative of conditions which existed at or near the dumping grounds and on the scows on their way in, with large masses of garbage clinging to the ridges which was pushed into the sea by the attendants as the scows neared the shore.

On July 17th Smack went out again with Johnson, Hall and Holgarson (R. 11), and took other pictures of the dumping grounds and a trail of grease and garbage on the sea. On that occasion the list of articles that they saw on the scows or in the garbage as dumped are the same as those listed on June 30, 1929 (R. 9, 10). Those articles compared generally with what he saw in the scows dumped in the sea on the fourteen different occasions when he actually saw scows dumping (R. 11).

Stormy weather holds back the scows, otherwise they dump every day, but when they have been held for a day or two, particularly in warm weather, the smell of the garbage on the scows will conquer everything but a very strong stomach. The day he saw the infant in the garbage it was particularly bad smelling and made him sick (R. 11).

The type of scows are shown clearly in Johnson's pictures. These side dumping scows invariably have a large amount of garbage clinging to the ridge which gradually falls off on their return. Exhibit 5 shows men cleaning ridge line of a scow. They do not start cleaning until they are within three or four miles of Scotland Light and the cleaning continues until they have passed that light and are within approximately four miles of Sandy Hook (R. 12).

Exhibits 4 to 11 also show scows and the accumulation of garbage hanging on after they have dumped. The cleaning of these scows on the way in leaves a trail of garbage and grease on the sea which can be followed for miles (R. 13).

Exhibit 12 shows a tow of scows returning empty. The lighter section of the water shown in this picture is the wake of grease and slick from the garbage which is left in the water after the scow passes. The grease is of a peculiar type and consists of little flecks from the size of a person's fingernail down to minute particles. It

EXHIBIT NO. 6. N. Y. CITY SCOW.

EXHIBIT NO. 21. FLOATING GARBAGE.

comes from the meats and greasy substance in the garbage (R. 13).

After the scow dumps the mass of garbage which they leave is sometimes piled as high as a foot above the water. Displacement gradually takes place; the heavier stuff finds its way through the mass and sinks to the bottom, leaving the lighter material floating on the surface. Exhibits 15, 18, 19 and 22 shows these conditions (R. 13, 14).

Exhibits 13, 14 and 15 show the density of the mass which actually supports objects out of the water. When the additional scows dump the mass spreads out and increases, according to the number of scows dumping, before the first dump has been dispersed by the action of the water (R. 14).

Smack observed two tows of three scows each dumped so close together in time and place that the mass of garbage of the six scows formed one island covering an area of at least seven miles long (R. 14). On one of his trips he sailed along one of these floating islands of garbage at the rate of seven miles an hour for forty-three minutes, or a distance of over five miles.

On May 22, 1929, he saw twelve scows of garbage dumped. The mass was so dense that it was necessary to repeatedly reverse the motor to clear it of stuff that clogged the propeller and stopped the boat. The vegetable and animal matter was in the process of decay and was offensive to sight and smell (R. 14, 15).

Exhibits 16 to 24, both inclusive, show areas of garbage in mass and in process of distribution as it drifted toward the New Jersey shore (R. 15).

Exhibit 13 shows men cleaning the barges as they were passing Scotland Light on the way in. Large quantities of garbage were still dripping from the scows leaving a trail of garbage on the sea. He has seen men clean

scows and throw garbage into the water three hours after dumping took place. He has seen them push off as much as 25 cubic yards on the way in (R. 16).

He repeatedly observed the action of the wind and tide on the garbage mass. Invariably moved ahead of the wind regardless of the direction of the tide. When the wind blew from the west the movement of the garbage was off-shore. If the wind came from the east, the movement was toward the Jersey shore. When the wind came from the south it moved toward the Long Island shore (R. 15).

On a northeast wind the garbage floats toward New Jersey shore. He has seen it go all the way to the shore. He has seen it work north ahead of a wind from the south and when the wind shifted to the northeast the mass of the garbage drifted toward the shore (R. 16). As it approaches the shore the garbage becomes involved in the undertow and when it gets inside of the breakers it is thrown in a mass in the water and is distributed on the shore. The garbage fills the shore water with so much grease that soap will not work on bathers who have been in that water. A horrible mass of garbage is left on the beach, which has to be cleaned up as well as possible, but the grease is left on the sand and sticks to the feet of the people walking on the beach and clings to their toes (R. 16, 17).

In sailing around the edge of a floating mass of garbage at sea he could look into the water and see the stuff dropping down from the floating mass. As the density of the mass was relieved these heavier articles were released and began to sink, but the lighter stuff drifts ahead of the wind and is deposited on shore (R. 17).

Sometimes the garbage is carried as much as ten miles to the north ahead of the wind and when the wind changes to the northeast or to the northward the garbage imme-

diately changes to the direction toward which the wind is blowing. If the wind is from the northeast at the time of dumping the garbage will strike the shore approximately ten miles further south than under the other conditions (R. 19).

The garbage floats in large masses over the surface of the water for an appreciable length of time after dumping. It sometimes floats in such masses for five hours before being dispersed. He has followed the trail of garbage, which he has seen dumped, in a definite line continuously to the beach, from approximately twenty miles southeast of east by Scotland Light. He stayed with it and traced the course and direction for four and one-half hours when the wind was blowing at the rate of about thirty miles an hour (R. 24). He studied the tides and courses of the ocean off the New Jersey shore and found that anything that floats on the surface is not appreciably affected by the tide when the wind is blowing at all hard. Floating objects are driven before the wind and even heavy objects which settle to the bottom near the shore are worked up on the beach by the waves and undertow. His observation has been that the wind affects the water and the movement of objects in it at depths as great as 18 feet (R. 25).

Forsman and Hall confirmed this testimony in detail (R. 231-234).

Exhibit 205 is a U. S. C. & G. S. map of July 25, 1925, on which Smack marked the locations where he has seen dumping of garbage take place. He marked points at twelve, nineteen and twenty-one miles. He also put an (x) on the map to indicate where he had seen the scows dribbling garbage on January 7, 1930 (R. 294). The twelve-mile point is about eleven and one-half miles off-shore from North Long Branch. The twenty-one-mile point is about nineteen and one-quarter miles off-shore

opposite Asbury Park. The most frequent dumping grounds he saw was between the nineteen and twenty-one-mile points opposite the beach between Deal and North Asbury Park. He also saw dumping between the twelve and twenty-one-mile points, which would be opposite the beach from North Long Branch to North Asbury Park. The compass on this map will show the direction the garbage would float in an east or northeast wind. Whatever is on the surface of the water goes ahead of the wind (R. 295). Any wind from the east or northeast carries the garbage toward the New Jersey shore. The wind does not have to blow hard to blow the stuff in. A mild wind will do it, but it takes longer to reach the shore (R. 296). The tide has very little effect on the garbage. The wind has the greater effect (R. 297). He has followed the garbage when it was coming in ahead of an east wind.

John G. Haas, Deputy Inspector of Barges, office of the Supervisor of the Port, investigated floating garbage dumped by New York City at sea on six trips made in February, March and April, 1929. When the garbage is dumped it stretches out a mile or so, 30 or 40 yards wide. Wind influences the movement of garbage on the surface (R. 636). On March 1, 1929, three scows dumped eight miles southeast of Scotland Light. The garbage drifted to within nine miles of Long Beach (Long Island) in twenty-four hours (R. 637).

On March 19, 1929, three scows dumped eight miles southeast of Scotland Light at a point about twelve miles from the Jersey shore. In twelve hours it had drifted to within three miles of the shore at Long Beach. There was a twenty-five mile an hour wind and the garbage drifted thirteen or fourteen miles during twelve hours (R. 637), and had distributed itself over an area greater than he could see from his boat. On February 25, 1929, two scows dumped eight miles southeast by east of Scotland Light. He followed it from 5:50 P. M. to 11 A.

M., the next day. The garbage worked northerly for four or five hours and then back to the southward; then to the westward toward the New Jersey shore. A thirty-five mile wind toward the Jersey shore compelled him to leave the garbage when it was approximately six miles from that shore and moving in that direction (R. 637, 638).

On March 11, 1929, three scows dumped eight miles southeast by east of Scotland Light and the garbage drifted eastwardly before a southwest wind. On February 22, 1929 he followed the garbage for twenty-four hours and in that time it drifted approximately eighteen miles without much wind (R. 638). April 4, 1929, three scows dumped twelve miles southeast by east of Scotland Light. He followed it for twenty-four hours. It drifted from eight to ten miles in that time (R. 639).

Mr. Johnson accompanied Smack, Forsman and Hall on some of the trips and took pictures (R. 299). These pictures show the garbage floating on the sea after the dumpings. (Pl. Exs. 12, R. 300; 14, R. 301; 15, 16, 17, 18 and 19, R. 302; 21 and 22, R. 303; and 24 and 29, R. 304); show scows returning after dumping with quantities of garbage clinging thereto or being pushed off into the sea. (Pl. Exs. 3, 4, 5, and 6, R. 299; 7, 8, 9, 10 and 11, R. 300; and 23, R. 303); and the trail, or "slick" of grease testified to by numerous witnesses. (Pl. Exs. 12, R. 301; 20, R. 302). The garbage which Johnson saw in the mass dumped by the city scows contained wooden things; crates, boxes, pieces of lumber, short sticks 3 or 4 inches wide, house utensils, brooms, brushes and handles. There was a considerable proportion of wood in the garbage. They saw some dumps where there was more wood than in others (R. 306).

Interference With Navigation and Fishing.

Free fisheries are those carried on by means of hooks and line, drifting gill nets, lobster pots and tackle on the bottom and such other forms as do not provide fixed objects on or near the surface of navigable water.

> "An obstruction is such an impediment as renders navigation less convenient, less secure, and less expeditious.
>
> Thus, wire cables and ropes, anchors, gaspipes, weirs, accumulations of logs, embankments and jetties, and deposits of sewage and *debris* have been decided to constitute obstruction * *." (Italics ours).
>
> 21 *Am. & Eng. Ency.* (2nd Ed.), p. 443.

Markus is Commodore of the Yacht Club at Belmar. He described the conditions of floating garbage which they encounter at sea when sailing their boats, for fishing or other purposes. The garbage accumulates in the yacht club basin and has to be cleaned out as fast as it comes in. He has seen at Sea Girt a hundred men sitting around waiting for a change of tide to carry the floating garbage out of the shore waters so they could begin fishing. (R. 270-1).

Mayor Barbour of Rumson, N. J., sails a yacht off the coast of Seabright and gives his experience in watching the defendant's scows dump at sea and following the drifting garbage to the shore. (R. 91-3).

The Fishermen.

Twenty fishermen testified to conditions of garbage in the waters off plaintiff's shores, where they have been engaged in fishing with nets and lines, and with lobster pots, for periods ranging from four to seventy years. (Voorhees R. 36-41; Schweitzer R. 42-47; DeCamp R. 47-50; Peterson R. 50-52; Anton Holgarson R. 52-5; Carl Holgarson R. 55-7; Oleson R. 75-9; Gustave Holgarson R.

82-84; M. Hall R. 117-125; Cook R. 31-3; Carver R. 213-4; Haley R. 318; Popp R. 347-51; Jacobson R. 373-6; Hines R. 393-4; Edward Phillips R. 397-402; Charles W. Phillips R. 402-4; Harry Peterson R. 408-10; Woods R. 433-4; Hankins R. 153-6).

They go to sea daily, whenever weather conditions permit, and observe the defendant's scows dumping their garbage at sea and the effect of that garbage upon the water and the shore. Many of these men are lobster fishermen, who use strings of pots half a mile long anchored and buoyed at each end, with from thirty to thirty-five pots on a string. Portions of the garbage which sinks, and other portions that drift in suspension at various depths between the bottom and surface, such as rags, clothing, pieces of wire and rubber, drift into or upon the lobster pots and become entangled with the anchor and buoy ropes so as to render it difficult, and sometimes totally impossible, to lift the pots. (R. 351). In sailing their boats they often encounter areas of floating garbage, too dense to sail through without jamming the propeller or injuring the boat. They have to pick their way through thinner portions or sail around it. This garbage comes from the New York City scows and is more or less a regular thing every day. This garbage affects lobster pots five or six miles inshore from the dumping ground. (R. 402). Some of these fishermen have had to straighten the propeller of their boats as often as two or three times a season, in order to repair damage done by coming into contact with the floating garbage and accompanying rubbish. When the boats encounter the garbage they are required to slow down to somewhat less than half speed and pick their way through. They sometimes sail twenty to forty minutes, or for distances of from four to seven miles, through these garbage drifts. Some of the materials which settle upon or wrap themselves around the ropes, by which they handle their

lobster pots, are unfit to handle. These entanglements, together with the cutting of ropes by floating debris, frequently causes the loss of lobster outfits. One of these lobstermen lost sixty traps during one season. The material also kills the lobsters in the traps. (R. 351). The garbage consists of decayed animal and vegetable matter and all manner of debris.

From the dumping grounds these witnesses have followed continuous streaks of garbage all the way to the shore. It drifts according to the direction of the wind. Whenever the wind is from the east or northeast it drifts to the New Jersey shore. Their testimony positively identifies garbage on the beach and in the waters as having come from the New York City scows dumped at sea. Instances are mentioned where sticks and other material in the garbage have punched holes through the hull of boats.

The accumulation of the garbage on the beaches frequently prevents the launching or landing of the fishing boats. Men and horses are required to remove the material from an area large enough for such purposes. In 1929 this garbage destroyed 85 lobster pots belonging to one fisherman. (R. 77).

The garbage gives the water a milky color and is a filthy mess of decayed matter, and at their landing places on shore the fishermen have to get together and clean up the garbage beaches and bury the garbage in the sand. (R. 119). The amount of garbage dumped at sea has constantly increased and the resulting pollution in the water and on the bottoms has driven away the fish and substantially reduced the amount of the gains of the fishermen from their trade. (R. 154).

In all kinds of fishing that require nets, such as mackeral fishing, the garbage and refuse raise havoc with

the nets which become entangled in, and torn and destroyed by the sticks, tin cans and other rubbish. (R. 409).

The experience of these fishermen, more than half of whom have fished continuously since the defendant began to dump its garbage at sea in 1917, confirms in every respect the result of Smack's investigations in 1929 respecting the source of the garbage, its action on the water after dumping, its interference with navigation and fishing, the identification of the garbage on the shore as coming from that source, and the general effect of the garbage on the shore. They recognized the conditions shown in Johnson's pictures as representing those with which they have been familiar throughout their experiences. (R. 37, 39, 44, 45-6, 48-9, 50, 56, 75, 91-2, 117, 350).

Pound Fishing.

Pound fishing is carried on in a fixed location. A pound or trap is constructed of nets, and wings of nets are stretched out between the pound and the shore for the purpose of heading off schools of fish as they feed to the shoreward, and leading them through the opening into the trap by such a means as to prevent them of finding their way out. Since this method of fishing requires the exclusive occupancy of a certain area of bottom and water it is authorized and regulated by statute. The following statutory provisions of the plaintiff deal with this subject:

> "*License to operate fish pound nets.* 1. It shall be unlawful for any person or persons, corporation or corporations, to erect, set, operate or maintain any fish pound nets in any of the waters of the Atlantic ocean, within three nautical miles from the coast line of this State, or in Sandy Hook bay or Raritan bay, without first obtaining a license for such purpose as hereinafter provided.
>
> 2. Applications for licenses for the purpose mentioned in the first section of this act shall be made to the Board of Fish and Game Commissioners. Said

board shall, upon the payment to them of the sum of fifty dollars for each fish pound net to be erected or set in the Atlantic ocean, and ten dollars for each pound net to be erected or set in Sandy Hook bay or Raritan bay, as a license fee, issue to the person or persons, corporation or corporations, applying therefor and paying said sums as aforesaid, if entitled thereto under the provisions of this act, a license duly signed by the secretary of said board to erect, set, operate and maintain a fish pound net in one of the waters above specified." (N. J. P. L. 1919, Chap. 94, pp. 214, 215; 1 N. J. Cum. Suppl. 1364, 1365).

These licenses are issued to authorize fish pounds within the exclusive territorial limits of plaintiff.

Following is a summary of the testimony of ten pound-fishermen: Meyers has been in the business for forty years. Bedsprings and boxes from the garbage and refuse in the water, tear the nets of his pounds in Galilee. This condition always follows an east or northeast wind. (R. 73-4.) Wooley has an investment in fishing pounds at Belmar between $18,000. and $20,000. and has been in business for twenty years. The value of his catches were: 1921, $55,000.; 1926, $44,000.; 1927, $41,000.; 1928, $29,000. The number of men employed were: 1926, 29; 1927, 24; 1928, 23. The garbage is getting worse every year. It tears holes in the nets and lets the fish out. It forms a scum and slime that accumulates on the nets which, with the dead things they collect from the garbage, drives the fish away and accounts for the decrease in catch as the quantity of garbage dumped increases. (R. 263-6.)

Frank Weber has been a pound fisherman at Monmouth Beach for 33 years and has encountered the garbage at sea as well as on shore. On one occasion he broke a propeller shaft while trying to extricate his boat from a sea of floating garbage. It damages their nets to the extent of from $2,000. to $3,000. in a single storm. His fish pound represents an investment of $40,000. At times the accu-

mulation of rubbish against the nets has swept them entirely away. He catches range from 800,000 to 900,000 pounds of fish a season, the value of which ranges from $35,000. to $50,000. per year. His expenses are about $30,000. a year and he employs 18 men. (R. 308-10.) His son, Fred, is associated with him in the business and supplemented his father's testimony regarding the difficulties and damage caused by the garbage. (R. 310.)

Prestley has been a pound fisherman for fourteen years near Galilee where he has an investment of $12,000. and employes ten men. His catches amount to about half of those of Frank Weber. The garbage tears his nets and lets the fish out. It causes damage to the extent of from $1,000. to $1,200. a year for ordinary repairs. (R. 311-2.)

Siciliano has been a pound fisherman at Long Branch for five years. He has an investment of $12,000. and caught 4,000 pounds of fish last year. He employs nine men. The garbage is pretty regular in the ocean around his pound. It creates an awful mess and smells bad when the sun shines on it. He has to collect and bury it in order to make a place to land his boats. The rubbish in the garbage cuts his nets. (R. 312.)

Fred Cook is a pound fisherman at Galilee and has an investment of from $12,000. to $14,000. His catch runs from 35,000 to 40,000 pounds of fish per season. The garbage and refuse becomes entanged in, and tears, his nets. Repairs on this account cost from $1,000. to $1,200. a year. He employs 12 men. The garbage is offensive to the smell and its accumulation on the beach renders it difficult at times to launch their boats. (R. 316.)

Swenson has been a pound fisherman at Manasquan for 25 years. The sticks in the garbage cut through his nets and the nets catch all manner of stuff. It has been necessary for him and his men to spend from four o'clock to ten o'clock in the morning to clean the stuff out of the

nets. It keeps the fish away. He has been required to use 15 men and four horses to clean the garbage off the beach before they can move their boats. Storms do not affect their nets except when they bring in the garbage and refuse and on such occasions they tear the nets to pieces. (R. 355-8.)

Fish pounds at Bradley Beach represent an investment of $50,000. and catch about $60,000. worth of fish a year. They employ 25 men. (R. 175.)

This testimony covers only a small part of the pound fisheries licensed by the plaintiff in the coastal area involved in this suit, which represents about three-quarters of the costal grounds used for such purposes. The latest official figures available at the time of the hearing were given by Governor Larson in Pl. Ex. 71. (R. 101.)

Coast Guards.

In the coastal stretch affected by this garbage there are 20 lifesaving stations of the United States Coast Guard Service (Appendix "A") between which patrols are constantly maintained to discover signs of vessels in distress. Like that of a fire department, the service for which the coast guards are called upon frequently requires the utmost expedition and precision, yet 17 coast guard officers testified to conditions caused by the accumulation of garbage on the beaches at their stations, which greatly hamper and interfere with their work, both as to launching of boats and conducting their patrols. (Bailey, R. 129-132; Newman, R. 133; Butler, R. 134-7; Townsend, R. 140; Gifford, R. 140-1; Parker, R. 141, 143-4; Wilbur, R. 144-5; C. Brower, R. 141-2; Salter, R. 142; Mitchell, R. 143; Perrine, R. 146; L. Brower, R. 145-6; Forsythe, R. 147; Cook, R. 147-8; Roswell, R. 148-150; Herbered, R. 307-8; Osborn, R. 308. These witnesses describe the measures they are required to take to remove the garbage from the beaches,

its decayed condition, the quantity and contents. It has to be removed to provide a way for launching their boats. At some of the stations three men are kept busy cleaning the beach in the summer time. (R. 146.) It must be promptly removed on account of its bad smell. (R. 148, 143.) It interferes with the use of their equipment. (R. 307) and with their boat drills (R. 308).

The Effect of Garbage Ashore.

Twenty-nine separate municipalities, with assessed valuations of approximately $140,000,000. (Pl. Ex. 69), occupying a continuous stretch of beach front of approximately 70 miles in length, are affected by the garbage conditions complained of. One hundred and eighteen witnesses testified to their personal experiences, in official or private capacities, with the nature and extent of the garbage in the water and on the beaches which interfers with the use thereof for fishing, bathing, and other recreational purposes. They show that at high tide the garbage is carried up on the beach and deposited throughout the whole width of the beach, between high and low water mark, as the tide recedes. They also show that with the aid of wind and high waves the garbage is carried under the boardwalks and buildings and into and across the streets to private properties, where it leaves accumulations of bottles and cans and offensive vegetable and animal matter. They show that it is offensive to sight and smell and that the odor enters the houses of the community and creates annoyance to the people in their homes; that it breeds and feeds swarms of flies which enter the houses; that it jeopordizes health and produces physical injuries and infections; that it occasions the expenditure of large sums of money to accomplish its removal and disposition; that it depreciates the value of property and creates an intolerable public nuisance which drives people away from the beaches.

It is impossible to summarize this great mass of testimony, or to describe the 347 exhibits, within any reasonable compass, although the magnitude of the injury inflicted would justify a somewhat extenuated discussion thereof. Some of the exhibits will illustrate this discussion.

Annexed hereto as Appendix "C" is a tabluation of figures given by witnesses from 17 of the municipalities, which happened to have the data in available form, showing, as near as could be ascertained from their records, the winter and summer populations, length of beach front, value of hotels and boarding houses, assessed valuation, cost of boardwalks, jetties, piers, pools, pavilions and pleasure places, value of private homes, cost of cleaning beaches, and the cost of bathing facilities. It shows that nine of the municipalities mentioned have spent for boardwalks $1,900,000.; five of them have spent for jetties to protect their beaches, $899,000. and the state has spent an additional sum of $838,494.28 for the same purpose (Pl. Ex. 70; R. 101); six of them have spent for piers $8,495,000; five of them have spent for pools, pavilions and pleasure places, $825,000.; fifteen of them spend an aggregate of something over $10,000.00 a year to remove the garbage from their beaches (in addition to the amounts spent for that purpose by private beach clubs, bathing industries, and by private individuals); and in seven of those municipalities $3,750,000. have been spent for bathing facilities.

Asbury Park.

The largest and most important seashore resort within the area affected by the garbage is the City of Asbury Park, a birdseye view of which can be obtained from plaintiff's exhibits 55 and 239-255. Other interesting pictures of recreational features are shown in plaintiff's exhibits 51 and 52, showing the convention hall and theatre; numbers 53 and 243, showing beach and boardwalk as used

EXHIBIT NO. 73. GARBAGE ON BEACH.

EXHIBIT NO. 117. GARBAGE ON BEACH, SEASIDE HEIGHTS.

EXHIBIT NO. 311. GARBAGE ON BEACH.

EXHIBIT NO. 45. OCEAN GROVE BEACH, JULY 4, 1929.

EXHIBIT NO. 41. . OCEAN GROVE BEACH, SEPTEMBER 4, 1923.

EXHIBIT NO. 40. OCEAN GROVE BEACH, SEPTEMBER 4, 1924.

EXHIBIT NO. 243. BEACH, ASBURY PARK, N. J., JULY 4, 1929.

EXHIBIT NO. 241. BOARDWALK, EASTER SUNDAY, ASBURY PARK, N. J.

in the summer time; Exhibit 241 shows crowds on Easter Sunday; number 56, showing the Monterey and other hotels and the parked automobiles of visitors; number 57, showing the beach and boardwalk; numbers 229-238, showing exhibits at agricultural and other shows held in the Casino. Plaintiff's exhibit 256 is a copy of the annual report of the municipal Publicity Bureau of Asbury Park for 1929; Exhibits 265 and 266 are annual reports of the Asbury Park Bureau of Information which is a department of the city government conducted by Miss McConnell as Director. Her testimony (R. 429-432) contains statistical information showing the very great extent and varied nature of the recreational activities in that city. The testimony of Mayor Hetrick (R. 377-390) and of Mr. Burley, Executive Secretary of the Chamber of Commerce (R. 426-8), and of Mr. Gruetzner, Municipal Superintendent, shows the very extensive expenditures and development along the beach front and elsewhere, and the various attractions provided at public expense, solely for recreational purposes, and the extent to which they are used. These improvements include boardwalk, convention hall, theatre, casinos, jetties, piers, bathing facilities, and golf and country club, aggregating more than $50,000,000. in expenditures of public moneys. Some of these expenditures, and similar expenditures by some of the other municipalities, are included in Appendix "C."

Exhibits 40, 41 and 45 illustrate the use of the beaches at Ocean Grove.

Governor Larson testified that shortly after his inauguration (1929) he consulted the Attorney General for advice as to the necessary action to stop this nuisance by compelling the defendant to discontinue the dumping at sea. He caused to be prepared the resolution for that purpose, which was adopted by the legislature. (Pl. Ex. 68.) He had been familiar with the conditions for the past six or seven years and realized that unless this pollution was

stopped it would ruin the beaches as play-grounds. He considers these beaches as one of the greatest assets of the state, which benefit the people from all parts of the state, as well as people from other states and countries, who resort thither for recreation. He discussed the subject in his inaugural message to the legislature in January, 1929. (Pl. Ex. 72, R. 98-101.)

The testimony of 118 witnesses, including the Mayors of fourteen of the municipalities, and twenty-nine other municipal officials, describes the nature and extent of this garbage nuisance in the several municipalities, the amounts expended annually for its removal and its general detrimental effect upon the attractiveness, development, and welfare of the people. It is possible in this brief only to touch upon the principal features of this nuisance.

The effect of this garbage upon the development of the municipalities and the use of the beaches is very harmful (R. 17, 151, 105, 106, 164, 172, 179, 209, 225, 249, 275, 314, 359, 364, 415, 427-8, 477, 481). It depreciates the value of property and interferes with the raising of municipal revenue (R. 505). The garbage and refuse renders it impossible, at times, to bathe or use the beaches (R. 17, 34, 32, 111, 112, 151, 61, 66, 68, 104, 86, 88, 172, 176, 179, 201, 202, 203, 204, 205, 214, 218, 227, 242, 247, 256, 313). When it reaches the beach it is often putrid (R. 18, 29, 145, 184, 189, 191, 203, 207, 252), and is repulsive and disgusting (R. 251). It includes dead animals, which are very offensive and have to be immediately disposed of (R. 108, 29, 115, 103, 88, 102, 164, 191, 214, 216, 222, 336, 344, 360, 364). It leaves gobs of grease which sticks to bathers' feet and bodies (R. 29; 32, 111, 306). In summer the garbage has an objectionable odor which affects the atmosphere for a considerable distance from the beach (R. 108, 151, 152, 67, 80, 103, 158, 143, 148, 215, 216, 245, 249, 321, 337, 341-2, 352, 353, 395, 416-7, 488, 498-9).

A great deal of time and expense is required to clean up and dispose of the garbage which accumulates upon the beaches (R. 27, 112, 235, 236, 102, 103, 156, 251, 321, 322, 323, 360, 392, 424, 485, 498, 520, Appendix "C"). On one occasion in 1927, and on another in 1929, the municipal authorities of Bradley Beach carted off four loads of garbage per hour each day for a week (R. 188-9). Fifty loads of garbage were removed at one time from another section of beach about half mile long (R. 112, 236). On February 7, 1929, they removed 63 truck loads of garbage, bottles, cans and other trash from a similar stretch of beach (R. 116). In April, 1929, it required nine men an entire week to remove one garbage accumulation from the beach at Spring Lake. It contained three full loads of bottles (R. 241).

On one occasion in the summer of 1929, 8 to 12 men, and two trucks each hauling 10 loads a day, of 1½ tons per load, were required for two and one-half days to remove one accumulation of garbage from the beach at Belmar (R. 272-3).

Practically every witness stated that the condition caused by garbage in the water and on the beach was a matter of constant complaint and discussion among the residents and guests in the seashore municipalities. These municipalities comprise a purely recreational community. There are no industries and people come solely for the seashore (R. 174, 175, 179, 200, 201-3, 226-7, 234, 237, 254, 258, 276, 285, 363, 427, 443, 474).

Garbage affects bathing and business conditions, since the shore municipalities and hotels depend upon the beach for their attraction (R. 34, 108, 152).

Surf fishing is greatly interfered with, and there are many fishing clubs along the shore (R. 275-6, 417-18). At times it is impossible to fish because the water is full of garbage (R. 109, 161, 417).

As Appendix "B" shows that many of the articles the garbage were identified as having come from Ne York City. Almost every witness has made such ide tifications.

The garbage comes in whenever the wind is to the nort east or east (R. 33, 66-7, 106, 86, 156, 164).

Menace to Life and Body.

On one occasion between 3,500 and 4,000 bottles wer collected from one accumulation of garbage at Bradle Beach (R. 221). On another occasion at Spring Lake s truck loads of bottles were picked up from one garbag accumulation (R. 245).

Bottles in the garbage break in the undertow and on th shore and strew the beach with broken glass (R. 28, 16 165, 416).

It draws flies of all kinds in great swarms (R. 417).

The garbage contains various articles unmentionable i their nature and highly objectionable to the touch (R 76-7).

One of the fishermen stepped on a broken bottle whil landing his boat and was taken to the hospital where te stitches were necessary to be taken in his foot (R. 77) Another fisherman testified that the horses which they used on the beach stepped on nails in boards in the garbage and were injured (R. 313).

The use of the beach or waters when the garbage is there involves the risk of stepping on nails in the drift- wood or broken glass which comes with the garbage. Many such cases of injury appear in the testimony (R. 312, 149, 28, 221, 245, 261, 314, 319-20, 344, 371, 369, 488). Last summer at Long Branch a gentleman cut his foot severely on a broken bottle in the surf which required seven stitches. Similar accidents have occurred to children

(R. 391). A great many instances of that kind have occurred at Point Pleasant and a good many of such cases have been taken to Dr. Deniston's hospital there; some of them of a serious character (R. 415-16).

The bathing clubs and pavilions maintain first-aid kits and some of them first-aid squads, for the sole purpose of treating people whose feet or body are injured by broken glass, nails and other refuse in the garbage, either floating in the water or stranded on the beach (R. 17, 259, 284, 338). In 1927 the City of Asbury Park was sued by a bather who had received a bad cut on his knee while bathing on one of the beaches owned by the city (R. 509). Some of the bottles in the garbage are labelled "Poison" which still have material in them. The situation is serious, especially if a child happens to pick up such a bottle (R. 106-107).

The presence of the garbage in the water and on the beach produces an unhealthy and a very dangerous condition (R. 314). Bathers must avoid the garbage and debris in the water because it would injure their bodies and would be a menace to their health (R. 328, 363, 164, 198, 482, 351-2). When it has laid in the sun some of it smells terrific and it is dangerous to go on the beach when it is there (R. 499-500). The witness Mosten has gone down to the beach to bathe when it was so nasty that he could not go in without getting the garbage in his mouth. It forms a nasty yellowish foam on the water (R. 68).

Officers of the Seabright Beach Club have had repeated occasion to stop little children, who picked up condrums from the garbage, from blowing them up with their mouths (R. 18). People are afraid to send children to the beach, lest they be poisoned by picking up things (R. 367-8).

Mrs. Jarden, who has a summer home at Mantoloking, testified that if they had realized the conditions caused

by the garbage and had to do it over again, they would buy further south where the beaches are clean and sanitary for children. "A mother wants a clean, safe, sanitary beach for a child to play on. These conditions are absent at Mantoloking because of broken glass, dirt, debris and disgusting dirt." She described the odor of the garbage as very disagreeable and intolerable. It is terribly offensive. She objects to the rags and mattresses. She fears that the children will get cut and pick up things (R. 352-3).

Tenants complained to Mr. Kirch, who is in the real estate business at Long Branch, that they are afraid to have their children go into the water because of the boxes and nails, garbage "and various other things which I do not care to name at this particular time, which are more offensive. Some of the articles in the garbage are so offensive that I prefer not to name them" (R. 359).

The average mother recognizes the possibility of typhoid fever in floating garbage of this nature and there has been typhoid fever in Red Bank where the witness who gave this testimony lives (R. 331). Some of the materials mixed with the garbage comes from sick rooms and has to be buried or burned (R. 336-337). Children have to be kept away from the beach at times on account of the filth (R. 102, 107). Mrs. Patch described the garbage as very disagreeable, not only because of its presence, but because of the things which the small children pick up from it (R. 204).

The garbage brings in a scum and filth on the ocean consisting of dissolved particles. It is dirty and smells. It is disintegrated vegetable matter, dead animals and rotten meat (R. 215-16). It is highly unsanitary. It has an objectionable odor and it is disagreeable to tread upon. It makes the beaches an unpleasant place for children to play and it is actually unsafe at times to bathe because of the large amount of refuse in the water (R. 351-352).

Mayor Hills of Spring Lake has had many complaints from families concerning their children and women. They were much alarmed and afraid their children would contract disease from the garbage (R. 239). Mr. Ward has to keep his own children away from the beach when the garbage is there. The doctor ordered it because he did not want the children to run the risk of contracting disease or gain an infection from the garbage (R. 415-16). Mrs. Rhodes will not permit her children to go to the beach until she ascertains what the garbage conditions are. That is the general practice in the community (R. 363).

Dr. James A. Fisher, of Asbury Park, an eye, ear, nose and throat specialist, testified that he was familiar with the conditions of garbage on the beach and believes they play a part in his professional work. He has prepared a summary of the diseases of the ear and the sinuses for the months of June, July and August to see if there has been an increase in those diseases during those months. In 1928 he had four cases of furunculosi; in 1929 he had twelve cases. In 1928 he had one case of external otitis, which is a swelling and inflammation of the ear canal. In 1929 he had eleven such cases. In 1928 he had eleven cases of middle ear infection, including the reddening of the eardrum, which required the drum to be opened. In 1929 he had fourteen such cases. In 1928 he had eight sinus infection cases. In 1929 he had eleven such cases. In each of those cases bathers came in with the remark that they had gotten something from the sea bathing. Pure sea water has a high chlorine content and is quite antiseptic; infection is therefore quite contrary to the natural condition of sea water. The cases which he mentions were only those that appeared in his records under A, B, C and D. His records were too numerous to complete the investigation for all the letters of the alphabet in his records (R. 84-86).

The Hotels.

The effect of the garbage upon the hotel business is described by the proprietors or managers of some of the important hotels (Penna, R. 113-5; Schock, R. 126-7; Hillig, R. 206-8; Hayes, R. 250; Stubbs, R. 251-2; Duffield (President, Asbury Park Hotelmen's Association) R. 421-2; Butcher, R. 422-3; McElroy, R. 424; Van Ness, R. 429; Kinmouth, R. 440-5; Manneshuer, R. 487-8).

This testimony gives considerable information regarding the nature and extent of the hotel business and the number and character of the guests who come to the seashore for recreational purposes during the summer. It shows that the sole attraction of the municipalities and the hotels is the beach-front and the opportunity for bathing, fishing and other recreation to be found there. It also shows that the garbage conditions are the cause of constant complaint and dissatisfaction among the guests particularly among those whose circumstances permit only a short vacation. If the garbage on the beach or in the water prevents them from bathing for two or three days, as frequently occurs, the major part of their vacation is ruined. This applies to guests who come for a week, but these circumstances are particularly unfortunate for those who come on day excursions or for week-ends and happen to find garbage conditions existing at the time. This testimony also shows that the presence of garbage in the water and on the beach has a direct effect upon the volume of the hotel business and the satisfaction of the guests. Instances are mentioned where guests were so disappointed by the garbage on the beach that they packed up their bags and went elsewhere to spend the remainder of their vacation (R. 207). Instances appear where guests stopped coming to these resorts entirely because of their disgust with the garbage condition (R. 250).

At the Monterey Hotel at Asbury Park in July, 1928, a group of seven guests who had been accustomed previously to stay for protracted periods, told the manager that the beach was a mess, that they could not put up with it, and they left (R. 443-444).

The president of the Asbury Park Hotelmen's Association stated that the garbage condition is the most discouraging thing which the hotel men have to deal with in their business (R. 422). The Asbury Park hotels have a general advertising program to attract people from distant places (R. 424).

Defendant's Proof.

As the Special Master observed (Rep. p. 50), plaintiff's testimony showing that the garbage drifted to the plaintiff's shore, its affect on navigation and fishing in plaintiff's waters, (within three miles of the shore) and the shore, was not contradicted by any evidence offered by defendant.

There is therefore no dispute concerning these facts, or as to quantity of garbage dumped by defendant at sea or the location of the dumping grounds, as designated by the Supervisor of the harbor at various distances, according to season, up to 20 miles, southeast by east of Scotlant Lightship, (Pl. Exs. 321-325).

That Lightship and the various ship channels at the mouth of New York Harbor and off the coast of New Jersey, are shown on Appendix "A" annexed to this brief. The locations of several of the dumping grounds are shown on Pl. Exhibit 205 (R. 294-5).

The fact that defendant's garbage reached plaintiff's shores was constantly called to its attention, without denial, during the negotiations of Governors Silzer, Moore and Larson, in the correspondence contained in Exhibits 298 and 299, and in Exhibits 257 and 258 there are fre-

quent admissions of the fact by official representatives of defendant. In August, 1925, Mr. Taylor, Street Cleaning Comissioner of defendant, came down to the Seabright Beach Club, in answer to complaints from Smack. He admitted that the plaintiff's garbage littered the plaintiff's beaches, and said "I am going to ask you, I am going to beg you to lay off me. You are making my life a hell. If you will, within one year we will have completed all our plans for incineration and we will dispose of all of New York City's garbage in that way." (R. 19).

At the hearings defendant undertook to dispose of plaintiff's proof by the testimony of three witnesses confined to three specific occasions, all in the winter time (January 30, February 1, and February 29, 1930) who attempted to show that the garbage dumped at sea was so beaten up by the wind and waves that it either sank or was dissipated. (Gainard, R. 547-57; Lawrence, R. 581-9; Bergsten, R. 614-621). The testimony of these witnesses is in entire accord with that of Haas, Smack, and the fishermen respecting the action of garbage after being dumped at sea and the manner in which it floats before the wind. On their first inspection they drifted with the garbage for a distance of about ten miles until they were required to discontinue on account of a snow storm (R. 549). On that occasion the garbage was dumped at a distance of twenty miles, and drifted to within fourteen miles, of the Jersey shore before they left. (R. 550). On the second occasion they put bottles overboard in the garbage to test the floating but did not gather them up because "they were floating to the Jersey shore." (R. 557). Since these inspections were made at night and one, at least, during a snow storm, it is not strange that the garbage disappeared from their view.

Summary of Facts.

It is difficult to adequately describe the nature and extent of the development of the plaintiff's seashore resorts or the extent to which they are used for bathing, recreation and other useful purposes. There is probably no place in the world where people resort in such large numbers to the seashore for the primary purpose of beach and bathing pleasure as in New Jersey, and the resorts along the section in question are second to none in their aggregate importance, value and extent of patronage.

The exhibits and the testimony show that these shore municipalities, which adjoin each other and stretch along the shore for a distance of seventy miles, constitute the greatest park and playground in the world. They serve the people of the adjacent municipalities, the people of the entire state, and people from all parts of the United States and some from abroad. In addition to the general use for recreational purposes which plaintiff undertakes to preserve, there has developed in the twenty-nine municipalities involved property values aggregating more than one hundred thirty-nine and one-half million dollars (Plaintiff's Exhibit 69), which depend for their maintenance upon the preservation of these recreational advantages.

Those municipalities have a permanent population of over 160,000 people, whose support and welfare depend upon these recreational enterprises. In addition to that, there are large increases in the population in the summer of people who operate summer hotels, shore-front concessions and business enterprises and those who assist in the general work of lodging, feeding and entertaining the many thousands of guests or residents who come in the summer.

The record shows that here is a large and important industry, one of the most valuable in the plaintiff's state,

which suffers constantly in annoyance and expense from the public nuisance caused by the defendant's dumping of garbage at sea. It retards the development and growth of the seashore communities; depreciates the value of real property; reduces and impairs the development of commercial enterprises; and retards the general prosperity; impairs and at times destroys the use and enjoyment of the advantages of valuable public beach front and of the shore waters for bathing purposes; creates a menace to life and limb from nails in boards, floating wood and broken glass brought in with the garbage; exposes the frequenters of the beach to infection and disease from decayed and putrid vegetable and animal matter and from disgusting, repulsive and unmentionable unsanitary articles therein contained, and the people in public places and in their houses to the annoyance of foul odors emanating from such decayed matter; incurs what amounts in the aggregate to a very large annual expense for cleaning the public and private beaches and removing the offensive material from streets and public places; and exposes the people about the beaches, streets and other public places and in their houses to infections and disease carried by the vast swarms of flies which feed and breed in the putrid masses of the garbage. No essential fact remains to complete a powerful indictment against the defendant for creating a public nuisance within the territorial limits of the plaintiff by reason of the dumping of its garbage at sea.

Public Nuisance Proven.

The Special Master's conclusions that the conditions shown by plaintiff's uncontradicted testimony amount to a public nuisance (Rep. 53), and that plaintiff has the right to bring this suit and to have injunctive relief, are amply sustained by all the authorities. 7 *Bacon's*

Abr., (Nuisance) pp. 223, 228-230, 233; 21 *Am. & Eng. Ency, L.* (2d ed.) pp. 682-3, 688, 711; 1 *Wood on Nuisances* (3 ed.) Secs. 14, 19-20; *Gould on Waters* (3 ed.) Secs. 21, 92-3; 1 *Spelling on Injunction,* Secs. 373-4; *Northwestern Fertilizing Co.,* v. *Hyde Park,* 97 U. S. 659; *Georgia* v. *Tenn. Copper Co.,* 206 U. S. 230, 237, 239; *Kuehn* v. *Milwaukee,* 92 *Wis.* 263, 18 L. R. A. 553, 554-6; *Block* v. *Baltimore,* 149 Md. 39, 129 Atl. Rep. 887, 891-4; *Huffmire* v. *Brooklyn,* 162 N. Y. 584, 57 N. E. 176, 177-8; *Peck* v. *Michigan City,* 49 N. E. 800, 801; *Kansas* v. *Concordia,* 96 Pac. 487, 20 L. R. A. (N. S.) 1050, 1055-7; *Board of Health* v. *Lederer,* 52 N. J. Eq. 675, 682-3; *Mugler* v. *Kansas,* 123 U. S. 623, 673; *Baltimore &c. R. R. Co.* v. *Fifth Baptist Church,* 108 U. S. 317; *Attorney General* v. *Jamaica Pond Acqueduct Corp.,* 133 Mass., 363-364.

(3)

Compliance by the defendant with the provisions of the Act of Congress of June 29, 1888 (29 Stat. 209) as amended, and the permits to dump garbage in the Atlantic Ocean at a distance in excess of one marine league from the shores of New Jersey issued by the Supervisor of the Harbor of New York in accordance with said Act, do not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

Under this heading defendant has grouped its exceptions 44 to 50, inclusive, which challenge the Master's findings that the permits of the Supervisor of the Harbor do not authorize or justify the defendant to commit a public nuisance in the waters or on the shores of the plaintiff.

Defendant claims the right to dump its garbage and refuse at sea by virtue of permits issued by the Super-

visor of the Harbor of New York, under authority of the following Act of Congress:

"The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than $250 nor more than $2,500, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor (June 29, 1888, c. 496, Sec. 1, 25 Stat. 209)" (*U. S. C. A. Title* 33, *Sec.* 441, *p.* 455).

"In all cases of receiving on board of any scows or boats such forbidden matter or substance as described in section 441 of this chapter, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed as provided in section 451 of this chapter, a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than

$1,000, nor less than $500, and in addition thereto the master of any tug or towboat so offending shall have his license revoked, or suspended for a term to be fixed by the judge before whom tried and convicted. (May 28, 1908, c. 212, Sec. 8, 35 Stat. 426)" (*U. S. C. A., Title* 33, *Sec.* 443, *p.* 458).

The only authority of the federal government is to protect navigation.

Wisconsin v. *Illinois*, 278 U. S. 367, 413.

The above-quoted act does not confer plenary power to authorize defendant to dump its garbage and refuse at sea. Such are the uniform decisions of the courts in construing similar acts, such as the Rivers and Harbor act of 1899, under which the Secretary of War issues permits for structures in or over navigable waters. *Cummings* v. *Chicago*, 188 U. S. 410; *Montgomery* v. *Portland*, 190 U. S. 89; *Attorney General* v. *Hudson County Water Co.*, 76 N. J. Eq. 543; 22 *Op. Atty. Gen'l*, 332; *Cobb* v. *Lincoln Park*, 202 Ill. 427; *International Bridge Co.* v. *N. Y.*, 254 U. S. 126.

There is no difference in principle in this respect, between the River and Harbor Act involved in the authorities above cited, and the act to prevent obstructive and injurious deposits in New York Harbor and adjacent waters above quoted.

A statute which purported to confer authority to dump defendant's garbage at sea so as to affect plaintiff's property would be in derogation of the common law, and therefore must be strictly construed. *Attorney General* v. *Hudson County Water Co.*, 76 N. J. Eq. 543, 552. The above statute so construed does not give any such authority. Moreover, that act does not appear to confer upon the Supervisor of the Harbor authority even to permit defendant to dump garbage in the places used for that purpose. It authorizes him to prescribe limits within which dumping of material is forbidden (Sec. 441). Sec-

tion 443 implies, but does not expressly authorize, the issuance of permits, before scows, of forbidden matter can be moved, defining "the precise limits within which the discharge of such scows or boats may be made." There is no evidence in this case showing what, if any, "precise limits" were defined in the permits for any of defendant's scows. The various reports of the Supervisor (Exhibits 321-334) prescribe the direction and distance "southeast by east from Scotland Lightship" for the dumping of scows containing garbage or other materials, but the statute says the permit *itself*, in each instance, shall define those "precise limits." It is, therefore, impossible on this record to determine even the validity of the permits, or permission to use the dumping grounds which defendant does use.

That act is distinctly limited in its application to "the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound." Outside of those limits another statute applies, namely section 407 U. S. Code, Title 33 (30 Stat. 1152, Sec. 13), which contains similar prohibitions with authority to the Secretary of War, "whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby," to permit the deposit of material in the navigable waters of the United States, upon such conditions as he may prescribe. It does not appear that the Secretary of War ever issued any permit to defendant. On the contrary defendant claims that its permits were all issued by the Supervisor of the Harbor, and Secretary of War Weeks in a letter dated September 10, 1923, advised Governor Silzer that "no permits therefor have been issued by the department" (Pl. Ex. 298).

There is a question whether the waters twenty miles southeast by east of Scotland Lightship are "adjacent" waters of the harbor of New York. Exhibit 205, described at pages 293-6, shows that the dumping places

observed by Smack were located approximately 11½ miles off North Long Branch and approximately 19¼ miles off Asbury Park. The dumping grounds most frequently used, were off the New Jersey shore between Deal Beach and North Asbury Park. It is therefore a question whether the dumping grounds used by the defendant are within the limits described in the act of 1888. *U. S.* v. *Sadie,* 41 Fed. 396; *City* v. *Leland,* 45 Fed. 380.

The Special Master points out (R. 46) that these dumping grounds are not within the limits of the definition of the Harbor of New York as prescribed by the Secretary of the Treasury, under the Act of February 2, 1895 (28 Stat. 672), as "a line from Navesink Lighthouse to Scotland Light, thence to Whistling Buoy in Gedney's Channel, and thence to Rockaway Point (see Plaintiff's Exhibit 205).

However, we are here confronted with the converse of the question discussed under Point 1, respecting jurisdiction. Defendant claims authority under the permit issued pursuant to an act of Congress, but denies jurisdiction of the Court over the place to which it claims the permit apply. In any event it is plain that the Master's conclusion is correct (R. 49) that possession of, and compliance with, the permits issued by the Supervisor of the Harbor furnish no defense to relieve defendant from the effect of a public nuisance resulting from its action thereunder. *Joyce on Nuisances,* Sec. 284; *Brayton* v. *Fall River,* 113 Mass. 218; *Franklin Wharf* v. *Portland,* 57 Me. 446; *Huffmire* v. *Brooklyn,* and *Block* v. *Maryland,* cited above.

(4)

Such garbage and refuse as reaches the plaintiff's shores from the dumpings by coastwise and other vessels and from other sources is negligible in comparison with that dumped by defendant and reaching plaintiff's shores and constitutes no defense to plaintiff's complaint.

Under this heading defendant has grouped its exceptions 51 to 69, inclusive, which challenge the Master's findings that whatever garbage and refuse reaches plaintiff's shores from passing vessels and other causes and other dumpings are negligible in comparison with that constantly being dumped by defendant and carried by winds and waves to and upon plaintiff's shores, and the Master's failure and refusal to find as requested respecting sewage from Long Branch and Asbury Park.

Defendant contends that the garbage dumped by defendant was so mixed up with condemned food stuff and garbage dumped by passing ships that it was impossible to tell the source from which the garbage on the beaches comes. Defendant's three witnesses, Gainard, Lawrence and Bergsten testified to the number of passing vessels and the alleged accumulation of garbage on the decks, amounting, according to Gainard, sometimes to 50 tons, accumulated in ten to fifteen days in port (R. 560), occupying a space of 50 cu. ft. to the ton, or 2,500 cubic feet of garbage and refuse piled on the deck of a vessel (R. 561). This would equal 100 lbs. of garbage per day per man for ten days for a crew of 100 men. Neither Lawrence nor Bergsten were willing to go that far, but Lawrence thought that he had dumped as much as from 25 to 30 tons of accumulated garbage at one time (R. 591). The rebuttal evidence shows that this testimony is incredible. Such dumping is in violation of the Act of 1888, and of the regulations issued by the Supervisor of the Harbor (Exhibits 342-4) as shown by his testimony

(R. 628). He (Captain Anderson) testified that in the enforcement of the law he employs two patrol boats and has the co-operation of the Custom Guards, Prohibition Officers and Coast Guards (R. 629); that if it were the ordinary practice of vessels to accumulate garbage in port and dump it at sea in the manner and quantities testified by Gainard, Lawrence and Bergsten, he or his inspectors would have been likely to have discovered some instances of it. It could not continually escape their notice. An occasional violation might not be detected but a prevailing practice could not escape detection.

During the hearings counsel for defendant attempted to obtain on cross examination of fishermen who testified for plaintiff admissions that passing vessels dumped garbage into the sea. A number of those witnesses admitted that small quantities were so dumped but all of them testified that there was too much garbage in the sea to have come from passing vessels (R. 45, 130), since vessels threw out only a very small amount, like a bucket-full, at a time (R. 131-40). In reply to such a question on cross examination, Mr. Bailey, who had been a coastguard officer for 28 years, said: "If the garbage came from the passing vessels it would come on a southeast wind, as well as on a north or northeast wind, but it does not come that way. It comes only on a east or northeast wind" (R. 132). In answer to a similar question, Mr. Howland replied that it was impossible for the garbage to have come from passing ships. He could see no reason why garbage from the passing ships would blow ashore, while garbage from the defendant's dump would go in the other direction, on the same wind (R. 29). One of the fishermen said: "I have seen quantities larger than the steamer could carry" (R. 40).

Other rebuttal of defendant's testimony came from two of plaintiff's witnesses. William Park, Superintendent of the Clyde and Mallory Lines, has been engaged in

coastwise shipping as captain and otherwise for more than thirty years. He operates 21 ships out of the port of New York having three times as many sailings as any other line. The only garbage accumulated in port that is dumped at sea is that of the last half day before sailing and amounts to perhaps an ash can full. Garbage or rubbish produced or cleaned from the ships while in port is taken to the piers and carted away by a garbage company. There is no room on a vessel to accumulate and store the quantity of garbage and refuse Gainard and his associates testified to. Ships dispose of their garbage at sea little by little as it is produced and everything that is edible is immediately disposed of by gulls or fish. He has never seen vessels dump any quantity of garbage at sea. Vessels do not stay in port ten days, if profitably operated. A crew of thirty men will produce in two days four or five cans of garbage (R. 641-5).

Harry P. Snow is chief officer of the steamship "George Washington" and has sailed in the coastal service for thirty years. During the lay-over of a vessel in port with crews of from 30 to 90 men, they accumulate not more than 2 to 3 10-gallon cans of garbage. It is dumped at sea after they leave port and is immediately consumed by gulls. He never saw any quantity of garbage dumped at sea by any vessel. He has sailed through the garbage areas of defendant's dumping grounds at sea and has seen quantities of garbage which could not have come from passing vessels. He has never seen accumulations of garbage on the decks of vessels, as testified to by Gainard and his associates. He made the significant statement that "No good sailor would cover his deck with slippery, slimy garbage (R. 645-9).

Sewer Pollution.

Defendant also alleges, and attempted to prove, that the waters and beaches at Long Branch and Asbury Park were polluted by insufficiently treated and unsanitary sewage from those cities. With respect to Long Branch it subpoenaed the Director and records of plaintiff's Department of Health. The records consisted of defendant's Exhibit 9, which included three resolutions, all adopted September 14, 1926, relating to the sewer system of a private company called "The Long Branch Sewer Company." Resolution (a) accuses the company of polluting the waters of the ocean by insufficiently treated sewage, and calls upon it to remedy the condition prior to June 15, 1927; resolutions (b) and (c) show that thereupon the company applied to the Department of Health for permission to make certain extensions and changes which were approved by the Department as providing "a sewage treatment plant satisfactory to this Department." Defendant also produced as its Exhibit No. 10 a report made in 1928 by Messrs. Watson, Pugh, and Lendall, Consulting Engineers of New York City, for the City of Long Branch, for the purpose of valuing of the sewer system of the Long Branch Sewer Company, the purchase of which the city then contemplated. Although that report purports to refer to criticism of the sewer system by "the state authorities" without mention of time and nature, the engineers recommended the purchase of the system "at the price asked by the company." (Defendant's Exhibit No. 10, pp. 1, 2.)

There is no other evidence of any deficiency in, or pollution from, the Long Branch Sewer System.

With respect to the Asbury Park sewer, two of defendant's witnesses testified that on March 11, 1930, they examined the outlet of that sewer, located in the ocean at a point between 1,000 and 1,200 feet from the shore and observed particles of decomposed fecal matter

and pieces of orange peel, celery, toilet paper and other objects floating in the water. They did not say this matter came from the sewer (R. 612-14). In rebuttal the Superintendent of the Asbury Park Sewer System described the method of sewer treatment, and stated that no fecal or solid matter goes into the sea and that the effluent is not of the character that will pollute the water. He further testified that for a short period each winter they open the valve for the purpose of flushing out the sewer system and that happened to be the condition existing on March 19, 1930, when defendant's witnesses examined the sewer outlet (R. 650-3).

Defendant offered as its Exhibit No. 11 and bill of complaint filed by the plaintiff's Department of Health against the City of Asbury Park on November 10, 1930, alleging pollution of the shore waters by the sewer system of that city "due to the inadequate, improper and insufficient *capacity* and *unit design* of said sewage treatment works," and praying for an injunction. These allegations were denied in the city's answer filed December 30, 1930. In due course that case will come to trial on the merits. Whether the Department of Health succeeds or fails in its attempt to prove the allegations of the complaint is not important in this case for the reasons: first, if it succeeds the occasion merely serves to illustrate the indiscriminate diligence of plaintiff in the protection of its beaches, and second, the cause of action alleged in that complaint arose after the record in this case was completed, and if those allegations are proven they could not have any effect upon the conditions of garbage pollution alleged and proven.

Other Testimony of Defendant.

Defendant produced the records of the office of the Supervisor of the Port showing that seven different companies obtained permits for dumping mud, cellar dirt and excavated rock at points from four to six miles southeast of Scotland Lightship. The proof does not show that any of these permits were ever used or that any such material was ever actually dumped, but that is immaterial because none of those permits authorized the dumping of garbage or other floating material, of which plaintiff complains (R. 546-7).

Another witness of defendant testified to the location of certain private docks in New York City which he had inspected between March 3 and 12, 1930, and described certain scows by name and certain classes of material, consisting in part of garbage and refuse and dirt, with which the scows were being loaded (R. 595-602). No testimony was offered that any of these scows had permits or were dumped at sea, or where they were dumped, and none of the names of those scows are included in those given by plaintiff's witnesses, who, on the contrary, distinctly identified, as belonging to the Department of Street Cleaning of the City of New York, by the initials "D.S.C." thereon, the scows which they testified were dumping garbage off the plaintiff's coast. If all of the scows mentioned in this testimony had dumped their material off plaintiff's coast the amount of their contents would have been infinitesimal and inconsequential as compared with the dumping by defendant of 192,000 tons per month in summer or of an average of 2833 tons of garbage and refuse each and every working day throughout the year.

Defendant's exception No. 57 refers to the failure and refusal of the Special Master to find, as requested, that Brooklyn Navy Yard scow containing refuse and garbage also dumped at sea at the regular dumping

points at which defendant's garbage is dumped. A score or more of plaintiff's witnesses saw defendant's scows dump garbage at sea, but they never saw a Navy Yard scow dump any material, and defendant produced no evidence of any such dumping.

Defendant's contention that a similar nuisance is being created by passing ships, private contractors, or the Brooklyn Navy Yard is not a valid defense. 21 *Am. & Eng. Ency. L.* (2d ed.) 690; *Rowland* v. *N. Y. Stable Manure Co.*, 88 N. J. Eq. 168, 175.

The Master was therefore justified in his conclusion (Rep. p. 36) that whatever garbage and refuse reached plaintiff's shores from these other sources are negligible in comparison with that constantly being dumped by the defendant, and frequently carried by wind and waves from the dumping places to and upon plaintiff's shores.

(5)

Particular exceptions to the Special Master's report and to his failure to find facts and make conclusions of law as requested by defendant and in support of its contention that all of the evidence, a case for equitable relief in favor of the plaintiff, was not made out.

Under this heading defendant has grouped its exceptions 70 to 92 inclusive, which challenge the Master's findings respecting the construction and operation of incinterators for the disposal of garbage, his finding that the defendant had delayed the adoption of a proper method for that purpose, and other miscellaneous findings or failures to refusals to find as requested on certain minor points.

The finding of the Master that the evidence does not show the cause of apparent delay by the defendant in adopting and putting in operation the incinerating system

and that this delay has been unreasonably long (Rep. p. 30), which is the basis of defendant's exceptions 70 and 71, is amply justified by the record, as appears from the discussion under the heading "Official Objections" in Point (2) of this brief. In spite of constant complaints from plaintiff's officials and municipalities; in spite of the numerous admonitions of the Secretary of War and the Supervisor of the Harbor; and in spite of the numerous promises of defendant's officials, all unfulfilled, defendant's Exhibit 12, and the testimony of defendant's witnesses, show that, in spite of the incinerators which defendant claims to have constructed and put in operation, the amount of garbage dumped at sea in the year 1929 was greater than that of the three previous years.

After a number of years of experience with defendant's promises, Captain Anderson, Supervisor of the Harbor, in a published statement of July, 1930, said:

> "Official statement has been made to the Supervisor that this desirable situation (the discontinuance of dumping at sea) would be reached by the end of 1930.
>
> Experience in the past indicates that these sanguine estimates are not to be taken too literally, however." *(U. S. Naval Institute Proceedings Vol. No. 56, No. 7, Whole No. 329, July, 1930, P. 577.)*

Defendant's exception No. 91 challenges the Master's failure and refusal to conclude as a matter of law, as requested, that the plaintiff has failed to prove facts sufficient to constitute a cause of action in equity for the relief demanded in the complaint or for any relief whatever in equity.

On the argument before the Master defendant contended that even though it was a city, rather than a state, it was entitled to the benefit of the rule stated in *Missouri* v. *Illinois*, 200 U. S. 496 and *New York* v. *New Jersey*, 256 U. S. 296, that in order to control the conduct of one

state at the suit of another, the injury must be of serious magnitude and clearly proven. Plaintiff contended, on the contrary, that the different rule established in *Georgia* v. *Tenn. Copper Co.*, 206 U. S. 230, applied, namely:

> (p. 237) "Some pecularities necessarily mark a suit of this kind. If the state has a case at all, it is somewhat more certainly entitled to specific relief than a private party might be."
>
> (p. 238) "This court has not quite the same freedom to balance the harm that will be done by an injunction against that of which the plaintiff complains, that it would have in deciding between two subjects of a single political power."

Defendant has not the status or sovereignty of a state, but is a citizen of the state of New York, *Wisconsin* v. *Duluth*, 96 U. S. 379; *Trenton* v. *New Jersey*, 262 U. S. 182, 189; *Metropolitan R. R. Co.* v. *District of Columbia*, 132 U. S. 1; *Cincinnati* v. *First Presbyterian Church*, 8 Hammond 298; 1 *Sharswoods Bl. Com.* 191, Note 6.

While we think this contention is correct we are also convinced that the Master was correct in his conclusion (Rep. p. 57) that there has not only been an invasion of serious magnitude of plaintiff's rights extending through some years, but it is continuing and is threatened for an indefinite period. For these reasons we think the Master was also correct in failing and refusing to conclude, as requested, that defendant is entitled to a dismissal of the complaint, with costs. (Defendant's exception No. 92.)

(6)

Recommendations For Decree.

Under this heading defendant has grouped its exceptions 93 and 94, which challenge, respectively, recommendations numbered 1 and 2 of the Master's report (pp. 59, 60).

With respect to recommendation number 1: The facts adduced by the proof, and the decisions applicable thereto, which have already been fully discussed, justify the Master's recommendations of a decree for injunction in accordance with the prayer of the complaint. That recommendation is qualified by the suggestion that the injunction should be delayed a reasonable time to enable defendant to carry into effect some plan to dispose of its garbage and refuse otherwise than by dumping it at sea. We call to the court's attention the fact that previous promises of relief have been totally disregarded; that the consequences of dumping garbage at sea were pointed out to defendant in 1907 (Parsons-Hering-Whinnery report, Pl. Exhibit 346), and that the committee of defendant's officials who reported to Mayor Hylan in 1921 (Exhibit 347) expressly stated:

> "It is known that the Federal authorities quietly resent, if they do not openly object to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. *When these objections become sufficiently strong it may be that New York will find itself so unprepared that it will be unable to quickly introduce a more satisfactory form of disposal.*" (Italics ours.)

It will be remembered that when Dr. Copeland and Commissioner McStay originally solicited permits from the Supervisor of the Harbor, in 1918, for permission to dump at sea, they stated that it was a "temporary disposition of garbage"—"a temporary expedient to bridge over an emergency" and the permission was requested only "until the 15th of September," 1918.

In view of these circumstances we submit that if any indulgence of the court is necessary it should be limited to the *barest necessity*, having in mind the following ob-

servation of Mr. Justice Holmes in the decision of this court in *Wisconsin* v. *Illinois*, 281 U. S. 179, 197:

> "They must find out a way at their peril. We have only to consider what is possible if the state of Illinois devotes all of its powers to dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defenses upon difficulties that it has itself created."

Respecting the second recommendation of the Special Master that the case be referred to a Master for findings of fact as to what reasonable time is necessary for the erection and operation of incinerators: Mr. Samuel A. Greeley, of the Chicago Engineering firm of Pearse, Greeley and Hanson, whose ample qualifications are disclosed, particularly with regard to the collection and disposal of garbage in New York City, at pages 653-6 of the record, and who the master regarded as a sanitary engineer of recognized experience and ability, with practical knowledge of the methods of the disposal of garbage (Rep. p. 29), and who was the co-author with Rudolph Hering in the publication of a standard authority on this particular subject, entitled "Collection and Disposal of Municipal Refuse" (R. 655), testified, without contradiction, that incinerating plants, such as the defendant has already erected, could be constructed and put into operation within a period of one year and that any number of plants could be simultaneously erected within that time (R. 661).

As the Master points out, Dr. Schroeder, Commissioner of Sanitation of defendant, testified that he had formulated a policy for the complete incineration of all of defendant's garbage and rubbish and that a program for its execution was submitted to the Mayor on December 23, 1929 (R. 592-3), but the record does not show that any action was taken on that report or the reason for delay in putting it into execution (Master's Rep. p. 29-30). Defendant claims that it has ample

powers of condemnation for the acquisition of sites for the erection of incinerating plants. This is a finding of the Master (Rep. p. 30), to which defendant has taken no exception. In view of these facts the only question left for a Master to consider on re-reference is the period of time necessary for the acquisition of land. This would seem to be a question that could be answered, within reasonable limits, by anyone familiar with the procedure of eminent domain in the State of New York.

Costs.

The decree of the court should carry costs in favor of plaintiff.

Conclusion.

Plaintiff asks for a injunction perpetually restraining and enjoining defendant, its contractors, officers, agents and employees, and all other persons acting or claiming or assuming to act under its authority, from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the ocean or other waters of the United States off the coast of New Jersey, and from otherwise defiling or polluting said waters and the beaches of plaintiff, or procuring them to be defiled or polluted as aforesaid.

Respectfully submitted,

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Solicitors of Plaintiff.

APRIL 30, 1931.

APPENDIX "B."

List of articles mentioned in the testimony as included in garbage dumped at sea and appearing on the New Jersey beaches, with page references to the stenographer's record.

(Note: Letters "N. Y." denote identification as having come from New York City.)

ADVERTISEMENTS:

211 N. Y., 269 N. Y., 495 N. Y., 531 N. Y.

ANIMALS:

15, 43, 45, 51, 53, 56, 125, 130, 134, 134, 146, 151, 164, 182, 191, 227, 228, 245, 261, 308, 310, 311, 318 322, 327, 336, 339, 341, 357, 360, 363, 366, 395, 403, 414, 434, 479, 484, 487, 499, 502

APPLES:

10, 67, 71, 76, 87, 102, 142, 143, 145, 146, 157, 162, 176, 178, 187, 188, 245, 392, 454, 529

ARTICLES (miscellaneous):

32 N. Y., 44 N. Y., 114, 134 N. Y., 141, 168 N. Y., 177 N. Y., 184 N. Y., 187 N. Y., 188 N. Y., 191 N. Y., 195, 198 N. Y., 199 N. Y., 206, 211, 222, 234 N. Y., 239 N. Y., 222 N. Y., 249, 258 N. Y., 267, 338 N. Y., 340 N. Y., 352 N. Y., 356 N. Y., 359 N. Y., 361 N. Y., 368 N. Y., 372 N. Y., 395 N. Y., 404 N. Y., 436 N. Y., 488 N. Y., 488 N. Y., 499 N. Y., 501 N. Y., 523 N. Y.

ASPARAGUS:

10

AUTO PARTS:

46, 77, 78, 125

BALLS:

10, 37 N. Y., 481

BANANAS:

31, 32, 48, 51, 56, 67, 70, 71, 76, 79, 80, 82, 86, 87, 102, 103, 114, 125, 126, 142, 143, 146, 146, 147, 148, 157, 162, 178, 198, 202, 205, 216, 218, 220, 223, 224, 238, 245, 267, 270, 270, 283, 327, 354, 355, 356, 358, 367, 394, 397, 399, 408, 454, 529, 529

BARRELS:

70, 71, 75, 86, 118, 125 N. Y., 140 N. Y., 142, 246 N. Y., 278, 310, 311, 311, 312, 315 N. Y., 316, 318, 322, 356, 356, 391, 392, 394, 397 N. Y., 529

BASKETS:

145, 275, 487, 499.

BEANS:

134, 157

BED SPRINGS:

31, 32, 32, 74, 102, 112, 125, 238, 263, 283, 367, 403

BEDS:

31, 73, 125, 145, 238

BEDDING:

51, 145, 271

BEEF:

358, 386

BEETS:

10, 134, 134, 140, 145, 157, 245, 529

Bill of Fare (see menu).

Billheads:

103 N. Y., 104 N. Y., 138 N. Y., 160 N. Y., 161 N. Y., 187 N. Y., 187 N. Y., 206 N. Y., 207 N. Y., 219 N. Y., 268 N. Y., 289 N. Y., 290 N. Y., 324 N. Y., 354 N. Y., 355 N. Y., 404 N. Y., 420 N. Y., 456 N. Y., 477 506 N. Y.

Boards (see sticks).

Boat:

223

Bones:

172

Books:

140

Boots:

125

Bottle Tops:

243 N. Y., 291

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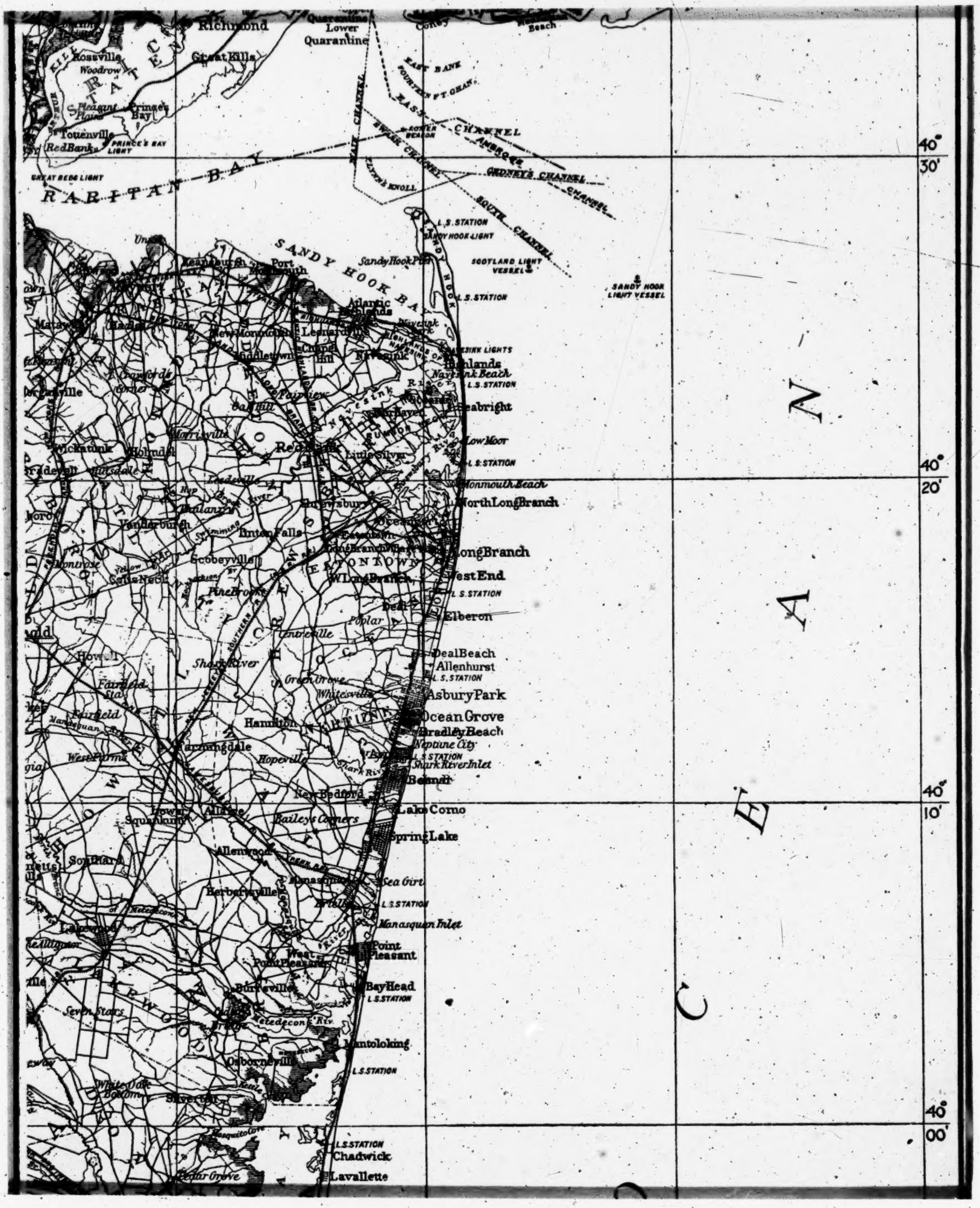
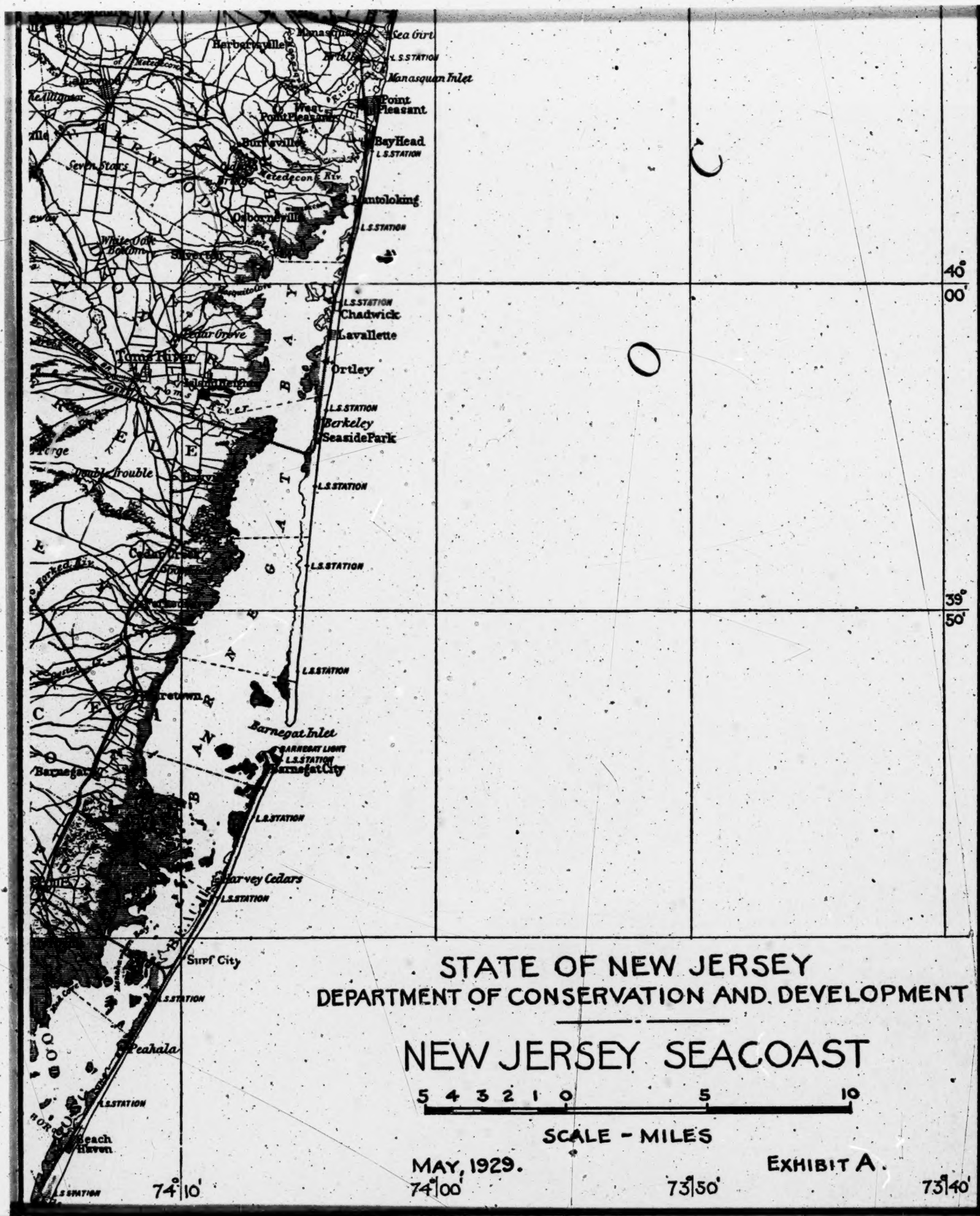
Creedmoor
Queens
Jamaica
Fosters Meadow
Springfield
Valley Stream
East New York
FLATBUSH
Flatlands
Far Rockaway
Rockaway Beach
Manhattan Beach
Coney Island
Gravesend
N. Utrecht
Ft. Hamilton
Bay Ridge
Brighton
Tompkinsville
Stapleton
New Springville
Richmond
New Dorp
Great Kills
Rossville
Woodrow
Prince's Bay
Tottenville
Red Bank
Upper Quarantine
Lower Quarantine
NEW YORK BAY
NEWARK BAY
RICHMOND
STATEN ISLAND
RARITAN BAY
SANDY HOOK BAY
EAST CHANNEL
GEDNEY'S CHANNEL
SOUTH CHANNEL
SANDY HOOK LIGHT VESSEL
SCOTLAND LIGHT VESSEL
L.S. STATION
Highlands
Navesink Beach
Seabright
Low Moor
Monmouth Beach
North Long Branch
Long Branch
West End
Elberon
Red Bank
Little Silver
Shrewsbury
Tinton Falls
Scobeyville
Vanderburgh
Holmdel
Wickatunk
Matawan
Keansburgh
Port Monmouth
Atlantic Highlands
Leonardville
Middletown
Navesink
Fairview
Oak Hill
Morrisville
Leedsville
Eatontown
W. Long Branch
Poplar
40°
30'
40°
20'



Richmond
Quarantine
Lower Quarantine
Great Kills
Rossville
Woodrow
Pleasant Plains
Prince's Bay
Tottenville
Red Bank
PRINCE'S BAY LIGHT
GREAT BEDS LIGHT
RARITAN BAY
EAST BANK
FOURTEEN FT. GRAN.
EAST CHANNEL
AMBROSE CHANNEL
GEDNEY'S CHANNEL
SOUTH CHANNEL
MAIN CHANNEL
SWASH CHANNEL
FLYNN'S KNOLL
L.S. STATION
SANDY HOOK LIGHT
SCOTLAND LIGHT VESSEL
SANDY HOOK LIGHT VESSEL
SANDY HOOK BAY
Sandy Hook Pier
Port Monmouth
Atlantic Highlands
Leonardville
New Monmouth
Middletown
Chapel Hill
Navesink
Navesink Lights
Highlands
Navesink Beach
Seabright
Low Moor
Monmouth Beach
North Long Branch
Long Branch
West End
Elberon
Deal Beach
Allenhurst
Asbury Park
Ocean Grove
Bradley Beach
Neptune City
Shark River Inlet
Bonnar
Lake Como
Spring Lake
Sea Girt
Manasquan Inlet
Point Pleasant
Bay Head
Mantoloking
Chadwick
Lavallette
Red Bank
Little Silver
Shrewsbury
Eatontown
W. Long Branch
Poplar
Centreville
Shark River
Green Grove
Whitesville
Hamilton
Farmingdale
Hopeville
New Bedford
Bailey's Corners
Allenwood
Herbertsville
Manasquan
Lakewood
Burrsville
Osborneville
Silverton
Seven Stars
Fairfield
Howell
Vanderburgh
Scobeyville
Pine Brook
Morrisville
Holmdel
Wickatunk
Matawan
Hazlet
Keansburgh
Crawford's Corner
Morganville
Fairview
Oak Hill
Leedsville
Hop Brook
Swimming River
Tinton Falls
Montrose
Yellow Bar
Colts Neck
Fairfield Sta.
Manasquan River
West Farms
Lower Squankum
Allaire
Southard
Metedeconk River
Metedeconk
White Oak Bottom
Mosquito Cove
Cedar Grove
40° 30'
40° 20'
40° 10'
40° 00'
CEAN



STATE OF NEW JERSEY
DEPARTMENT OF CONSERVATION AND DEVELOPMENT

NEW JERSEY SEACOAST

5 4 3 2 1 0 5 10

SCALE - MILES

MAY, 1929.

EXHIBIT A.

APPENDIX "C".

Cities	Population		Beach Front	Value of Hotels and Boarding Houses	Assessed Valuation	Cost of Boardwalk	Jetties	Piers	Pools, Pavilions, Pleasure Places	Private Homes
	Winter	Summer								
Asbury Park..... (R. 377-378) (R. 506)	1920—15,000 1929—18,000–20,000	200,000	1 mile	$30,000,000	$36,000,000–37,000,000	$250,000 for widening $210,000		$7,000,000		
Allenhurst ..... (R. 279-281)	1,000	3,000	1,000 feet		6,635,350			275,000		
Avon (R. 113)	1,500	5,000	2,900 feet		3,000,000	150,000				$ 500,000
Bayhead ..... (R. 226)	300	6,000–8,000	6,100 feet	210,809	2,108,094	40,000	$ 15,0000			
Belmar ..... (R. 255-256)	3,800	35,000	1.5 miles	700,000	7,100,000	50,000		525,000	$ 50,000	6,440,000
Brielle ..... (R. 224)	13,000	18,000								
Bradley Beach ..... (R. 174-175)	5,000	30,000–40,000	4,800 feet	1,105,400	8,062,764	75,000	47,000		398,000	4,133,200
Deal ..... (R. 363-366)			1.25 miles		8,000,000		500,000		250,000	
Long Branch..... (R. 313)	20,000	30,000–40,000	4.5 miles		20,847,500					
Private Investment..... (R. 391)										
Manasquan ..... (R. 489)	2,500	6,000–7,000	1 mile		4,000,000	25,000				
Ocean Grove..... (R. 58-59)	3,500 4,000	25,000–35,000–45,000	.75 mile	3,000,000	9,240,295	45,000		60,000	25,000	1,500,000
Point Pleasant..... (R. 414-415)										
Sea Girt..... (R. 165-166)	500	3,000–3,500	300 feet	500,000	2,271,729		42,000	150,000 to be built.	100,000	500,000
Seaside Heights..... (R. 483)	1,000	5,000–6,000	4,500 feet	75,000	1,500,000					300,000
Seaside Park..... (R. 273-274)	500	5,000	1.6 miles		2,600,000	500,000	305,000			
Shipbottom Boro, Arlington. (R. 370)	300	1,500–3,000			1,100,000					
Spring Lake..... Imp. Assn. (R. 236-238)	1,500–2,000	15,000–20,000		2,000,000	7,000,000	25,000		465,000		

APPENDIX "C".

Population		Beach Front	Value of Hotels and Boarding Houses	Assessed Valuation	Cost of Boardwalk	Jetties	Piers	Pools, Pavilions, Pleasure Places	Private Homes	Cost of Cleaning Beaches per Year	Bathing Facilities
Winter	Summer										
1920—15,000 1929—18,000–20,000	200,000	1 mile	$30,000,000	$36,000,000–37,000,000	$250,000 for widening $210,000		$7,000,000			For 2 wks. $475.23 131.80	
1,000	3,000	1,000 feet		6,635,350			275,000			$1,000	$ 250,000
1,500	5,000	2,900 feet		3,000,000	150,000				$ 500,000		40,000
300	6,000–8,000	6,100 feet	210,809	2,108,094	40,000	$ 15,0000				$3,000 per yr.	
3,800	35,000	1.5 miles	700,000	7,100,000	50,000		525,000	$ 50,000	6,440,000	1929—$2,000	110,000
13,000	18,000										
5,000	30,000–40,000	4,800 feet	1,105,400	8,062,764	75,000	47,000		398,000	4,133,200	1928—$809 1928–9—$1,000 1929—$877.73	249,500
		1.25 miles		8,000,000		500,000		250,000		Per yr. $1,000–1,500	2,000,000
20,000	30,000–40,000	4.5 miles		20,847,500						Per season $200–300	
2,500	6,000–7,000	1 mile		4,000,000	25,000					1929—$500	1,000,000
3,500 4,000	25,000–35,000–45,000	.75 mile	3,000,000	9,240,295	45,000		60,000	25,000	1,500,000	1926—$340.08 1927— 291.03 1928— 297.84 1929— 194.90	50,000
										Per wk. $10–12	
500	3,000–3,500	300 feet	500,000	2,271,729		42,000	150,000 to be built	100,000	500,000	1929—$242.14	50,000
1,000	5,000–6,000	4,500 feet	75,000	1,500,000					300,000	$500	
500	5,000	1.6 miles		2,600,000	500,000	305,000				$600	
300	1,500–3,000			1,100,000						$300	
1,500–2,000	15,000–20,000		2,000,000	7,000,000	25,000		465,000			Per storm $300 (1929) $700	

FILE COPY

APR 18 1931

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. [redacted] riginal

STATE OF NEW JERSEY,

Plaintiff,

—against—

THE CITY OF NEW YORK,

Defendant.

Defendant's Brief in Support of its Exceptions to the Report of the Special Master and His Recommendations for a Decree and to His Refusals to Make Findings of Fact and Conclusions of Law as Requested.

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IN THE

Supreme Court of the United States

October Term, 1930.

Original No. 17.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

DEFENDANT'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER AND HIS RECOMMEDATIONS FOR A DECREE, AND TO HIS REFUSALS TO MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AS REQUESTED.

STATEMENT OF THE CASE.

Pursuant to leave of this court granted in May, 1929, the State of New Jersey filed a bill of complaint against the defendant, The City of New York, praying the court

to issue its writ of injunction perpetually restraining the defendant, its contractors, officers, agents and employees from dumping or suffering to be dumped any garbage, refuse or other noxious, offensive or injurious matter into the Atlantic Ocean or other waters of the United States off the coast of New Jersey and from otherwise defiling or polluting said waters or the beaches of said State.

On leave obtained from this Court, the defendant filed its original answer in June, 1929.

In October, 1929, the plaintiff filed its reply joining issue on the complaint and answer, and asked for the appointment of a Special Master to take testimony, etc.

Thereupon this Court, on October 14, 1929, appointed the Hon. Edward K. Campbell to take testimony, make Findings of Fact and Conclusions of Law, together with recommendations for a decree, all to be subject to consideration, revision or approval by this Court. (Report of Special Master, p. 1.)*

Hearings for the reception of testimony in accordance with the terms of the order were thereafter held on numerous occasions, in different places, in 1929 and 1930. (R.Sp.M., pp. 1-2.)

On February 2nd, 1931, a motion to amend the answer was submitted by defendants to this Court and the same was allowed February 24, 1931. (R.Sp.M., p. 7.)

On March 20th, 1931, the Special Master filed his report with the Clerk of this Court, wherein he found that the plaintiff was entitled to relief in accordance with the prayer of the bill, etc., and recommended a decree accordingly, and that the matter be referred to a Special Master for Findings of Fact as to what would be a reasonable time for the construction of incinerators by defendant, to dispose of its garbage now being dumped at sea. (R.Sp.M., pp. 59-60.)

*All references to page numbers of the Master's Report are to those found in his original report and at the top of the page in the volume of Pleadings, etc., submitted for the Court's convenience.

THE PLEADINGS.

For a summary of the contents of the complaint, the original answer and the amended answer, we refer the Court to the report of the Special Master, pages 3 to 9, inclusive, and will, therefore, not set forth any further description thereof in this brief.

CONSTITUTIONAL PROVISION UNDER WHICH JURISDICTION CLAIMED.

Article III, Section 2 provides in part as follows:

> "The judicial Power shall extend to all Cases in Law and Equity * * * to Controversies between two or more States; * * * between a State and citizens of another State * * *. In all cases * * * in which a State shall be a Party, the Supreme Court shall have original Jurisdiction."

PARTIES AND JURISDICTION.

In the report of the Special Master, at page 9, there is a descriptive heading in the above stated language. Thereunder it is said that this is an original action brought by the State of New Jersey, under a resolution of its Legislature, approved by its Governor, and that the defendant is a municipal corporation of the State of New York. These allegations are, of course, not denied. But there is a further statement that "the case presents a justiciable controversy over which this court has jurisdiction." In order that there may be at the outset no misunderstanding, we desire to state that while the general jurisdiction of this Court over a controversy between a state and a municipal corporation of another state, such as defendant, is not and cannot be contested

in any way, an issue has been raised herein both by denial of certain allegations of the complaint and by the affirmative allegations of the first defense in the amended answer (and by appropriate exceptions to the Master's report) that there is here *not* a justiciable controversy for this Court's descision under the facts presented.

THE FACTS AS FOUND BY THE SPECIAL MASTER.

Near the bottom of page 9 of the Special Master's report occurs the heading "Findings of Fact," under which is an introduction or preamble leading to the heading "General Statement" on page 10. Thereunder are some 17 subdivisions, each with a descriptive subheading. The allegations, or findings under sub heading "(1) Locality," "(2) Area Affected," "(3) Summer Resorts," "(4) Beaches," "(5) Fishing," "(6) Bathing," are not denied, or excepted to although certain evidence from the record will be cited hereafter in connection with the failure of the Master to find certain facts as requested by the defendant, which explain certain facts found, which may well cause different inferences to be drawn therefrom.

Also a portion of the Master's Findings of Fact under subdivision "(7) Garbage," which finds its way onto the beaches of the plaintiff under certain conditions, are not denied. The same may be said of Findings under subdivision "(8) Removal and Expense," "(9) Water and Fish Nets," and "(10) Occurred, When."

Defendant also admits that the Master's Findings set forth under subdivision "(11) Dumping," correctly state the situation in regard thereto, and the same may be said of so much of those appearing under sub-heading "(12) History of Dumping," as appears on page 19 of the report; also all of those Findings set forth under subheading "(13) Complaints."

Many of the other Findings, however, are expected to, so that we will now briefly summarize the admitted facts.

The particular locality affected by this action is the easterly side of the State of New Jersey, bordering on the Atlantic Ocean, for about 50 miles from Highlands (Atlantic) to Beach Haven (see map attached to complaint). Within this 50 miles of ocean frontage are 29 separate municipalities. A substantial portion of the land below highwater mark on this frontage has been conveyed to various municipalities and individuals by different forms of conveyance. The resident population of such municipalities is about 160,000, and the Summer population exceeds this number many times over. The assessed valuation of property within the municipalities for tax purposes exceeds $139,000,000. (R.Sp.M., pp. 10 and 11, "(1) Locality," "(2) Area Affected.")

Such municipalities are seashore resorts frequented by thousands of visitors during the Summer, solely on account of the attractiveness of the sea and beach for fishing, boating, bathing and other recreational purposes. (R.Sp.M., p. 11, "(3) Summer Resorts.")

The beaches along said frontage afford natural advantages for seashore resorts and are patronized as such. To such natural advantages improvements have been added in the way of jetties, piers, boardwalks, pavilions, pools and bathing facilities and casinos, on all of which over $14,000,000. has been expended, and other projects are planned which call for additional large outlays. The beaches are within easy access of New York City and Philadelphia and are visited by large numbers of people from said cities, from other parts of the country and even from abroad. The inhabitants of these shore front municipalities depend for their livelihood chiefly upon the business of maintaining the resorts. People congregate thereat, and clean beaches are of the utmost importance

to the comfort of the visitors and the prosperity of the residents. Many persons also commute during the summer from their private homes in these municipalities to New York and Philadelphia. (R.Sp.M., pp. 11-12, "(4) Beaches.")

Numerous citizens have constructed and operate fish pounds, under license therefor required by the State of New Jersey, and have invested many thousands of dollars in such enterprises, which give employment to about 500 persons. The nets of these pounds usually extend from a point about a quarter of a mile from the shore outward for a distance of about 1500 feet, in water about 20 to 35 feet deep, and are supported by poles driven into the ocean bottom. More than 100 of these fish pounds exist, which were valued in 1928 at $700,000., and the fish caught that year sold for about $950,000. Less fish were taken in 1928 than in 1924, 1925 or 1926, but more were taken in 1928 than in 1927. Fishing, as a sport, from the shore or from boats, is also engaged in by many persons. (R.Sp.M., p. 13, "(5) Fishing".)

Surf bathing is indulged in by numbers of persons and the attractiveness of the resorts for this purpose depends on the wholesomeness of the water and the freedom of the beaches from pollution, and unhealthful conditions. (R.Sp.M., p. 14, "(6) Bathing".)

Vast quantities of garbage and refuse are stranded on the beaches in question, being cast theron by the waters of the ocean. The character thereof is described under subheading "(7) Garbage," in the report of the Special Special Master (pp. 14-15).

Such deposits must be speedily removed, especially in Summer, because of offensive odors emanating therefrom, and because they are feeding places for swarms of flies. The odors cause discomfort and nausea. Portions of the deposits are putrid and must be buried or hauled away.

(Other facts concerning the garbage as found by the Special Master (p. 16), especially in relation to health and injuries to property, business and rental values, are contested by the defendant and are, therefore, not set forth here.)

The cost of removal of garbage deposited on the beaches amounts to hundreds and even thousands of dollars a year in many of these municipalities, and to many thousand dollars all told. (R.Sp.M., p. 17, "(8) Removal and Expense.")

When garbage comes ashore a good deal of the same kind is apt to be held in suspension in the adjacent waters, thereby rendering bathing undesirable and impracticable until the water clears in a couple of days or a day after the deposits on the beaches. The garbage and refuse also tears the fish pound nets, fouls them and injuriously affects such business, and also imposes a cost of many thousands of dollars on the owners for the repair of nets. (R.Sp.M., p. 17, "(9) Water and Fish Nets.")

Deposits of garbage occur when the winds are from the east or northeast, especially when strong, or of two or three days' duration, and sometimes they occur with a southeast wind. They occur at some beaches four or five times a season, and frequently throughout the year, varying with the situation of the beaches. (R.Sp.M., p. 18, "(10) Occur, When.")

The defendant has dumped its garbage, street sweepings and rubbish at sea since the Fall of 1918. Its records show deposits averaging more than one million and a third cubic yards per year for the years 1924-1929, inclusive, the amount deposited in 1929 being greater than in either of the three preceding years. Much more is dumped in Summer than in Winter, 192,000 cubic yards being dumped in June and 52,000 cubic yards in February, 1929. Dumping takes place every day of the year except when weather conditions prevent. (R.Sp.M., p. 18, "(11) Dumping.")

For about 20 years prior to 1918, the defendant disposed of its garbage and street sweepings by the reduction system (relatively low temperature burning) and, except for a brief period in 1906 when the reduction plant needed repairs, did not dispose of such materials at sea. In fact, the Master found that the dumping of the defendant's garbage and refuse at sea did not begin until 1918. (R.Sp.-M., pp. 29, 30 "(17) Incinerators".) In 1918 the reduction plant at Barren Island having burned and the succeeding contractor, with a plant at Staten Island, having failed, the City applied to the Supervisor of the Harbor of New York for permission to dispose of its waste materials in the emergency with which the City was confronted. The Supervisor granted the request. An act of Congress of June 29, 1888 (25 Stat., 209) to prevent obstructive and injurious deposits within the Harbor and adjacent waters of New York by dumping or otherwise made provision for the appointment and jurisdiction of this official. As amended, the Act is now part of Sections 441 *et seq.*, U. S. Code. The Supervisor prescribed an area southeast of Scotland Lightship, where dumping should take place, ultimately locating such dumping points at distances of 8, 12 and 20 miles southeast of the Lightship—the 8 mile point to be used in Winter being about 10 miles from the New Jersey shore; the 12 mile point for use in the early Spring and late Fall months being 12½ miles therefrom, and the 20 mile point being for use in the Summer, late Spring and early Fall months, being about 22 miles from said shore. The materials to be dumped are loaded upon scows at designated City docks, from wagons and trucks collecting them in the City. These scows are towed by tugs, in tows of two or three scows, to the area of disposal. Accompanying each of the tug boats is a "Dumping Inspector" from the office of the Supervisor of the Harbor, whose duty it is to see that the dumping

is done within the prescribed areas. He is required to report on each occasion directly to said office the facts as to the scows and place of dumping. (R. Sp. M., pp. 19-20, "(12) History of Dumping.")

The Master has also found as a fact that the City's dumping was by permission of the Supervisor of the Harbor. (R. Sp. M., p. 43.)

Complaints in respects to the condition of the beaches of New Jersey, as a result of the deposit of garbage thereon, made by the officials of the New Jersey municipalities and by the successive Governors of that State, were frequent commencing shortly after the time the City of New York started dumping in 1918. These were made to the Supervisor of the Harbor and to the Secretary of War, and many were by these officials transmitted to the Mayor and to the Commissioner of Street Cleaning of the City of New York. A commtitee appointed by the Mayor of New York in 1921 reported that the practice of dumping garbage at sea was most undesirable. The Governors of New Jersey discussed the same in their annual messages so that the subject became a politieal matter in that State. (R. Sp. M., pp. 21-22, "(13) Complaints.")

Committees of officials and citizens appointed by the City authorities reported in 1907 and 1921 advising against the method of dumping garbage at sea because the least harmful material sinks and the most harmful floats so that much of the floatable mass will be scattered along the beaches through the action of current and wind (R Sp. M., pp. 27-29 "(17) Incinerators"). The report ofthe Supervisor of the Harbor for 1918 to the Chief of Engineers (U. S. Army) stated that it is apt to wash up on the beaches (R. Sp. M., p. 27 "(16) Appearance and Movement").

Other findings of fact in connection with the last two set headings are not concurred in or admitted and will be discussed elsewhere.

ADDITIONAL FACTS.

In addition to the above admitted facts as found by the Special Master matters of statutory foundation or uncontroverted by the plaintiff will be here set forth.

In 1897 the present City of New York was organized through a consolidation of various contiguous or nearby municipalities under the medium of Chapter 378 of the Laws of 1897 known as the Greater New York Charter. The territory thereby consolidated was subdivided for purposes of local government into the Borough of Manhattan, The Bronx, Brooklyn, Queens and Richmond.

By Sections 96 and 534 of said Charter a Department of Street Cleaning was created with jurisdiction and control over the removal or other disposition as often as the public health might require of ashes, street sweepings, garbage and other like refuse and rubbish.

Four years later Chapter 466 of the Laws of 1901 amended and revised said Charter, Section 383 thereof transferring jurisdiction over the removal of such material in the Boroughs of Queens and Richmond to the presidents of those boroughs. This divided jurisdiction continued until 1929 when Local Law No. 13 of that year adopted by the Municipal Assembly of The City of New York under statutory authority amended and supplemented said revised Greater New York Charter of 1901 and created a Department of Sanitation to which was transferred jurisdiction over the removal and disposition of ashes, street sweepings, garbage and refuse throughout the City. (This brief, Appendix A).

Defendants submitted evidence to the effect that garbage and refuse is dumped from coastwise and other vessels going southward from the Port of New York, the sea lane or route for such vessels being at a distance from

the New Jersey coast of from three miles at the northern end to eight miles off Barnegat Lighthouse (R. Sp. M., p. 31). These coastwise steamers number about twenty a day going south, such vessels doing most of the dumping rather than the northbound (R. Sp. M., p. 31). Some of these vessels feed their crews and accumulate garbage and refuse while in the Port of New York which is not dumped until after passing Scotland Lightship on the way south (R. Sp. M., p. 32). Fogbound vessels off the entrance to the harbor of New York throw over garbage and refuse material accumulated during their stay (R. Sp. M., p. 33).

The kind of garbage and refuse dumped by many of these coastwise ships is of the same kind and character as that found on the beaches of New Jersey and is referred to in the Special Master's Report, page 32. (For greater details see Abstract of Testimony, pp. 554-555, 556, 584, 585, 614-616).

The report to the Supervisor of the Harbor for 1929 to the Secretary of War (Plaintiff's Exhibit 335, page 281, Abstract of Testimony, pp. 541-542), specifically states:

> "It is probable that a great deal of garbage is dumped at or inside the harbor entrance by the enormous tonnage passing in and out of New York, and also that the local floating equipment throws more or less garbage overboard."

It is uncontroverted by plaintiff that at least three (four—Pr. A. 547) different concerns dump "cellar dirt" at the four-mile limit southeast of Scotland Lightship and several others dump cellar dirt mixed with rock at the six-mile limit (R. Sp. M., p. 34).

Not only is cellar dirt so dumped intermixed with rock, but, as described by Supervisor Anderson of the Harbor of New York it "is debris from buildings that have been torn down" (Abstract, p. 537) and that "debris" means "joists, timbers, lath and plaster of a very light kind." It would be light small floatable material, wood or paper (Abstract, pp. 545-546). Sometimes cargoes of condemned foodstuffs are dumped a short distance beyond the area used by the defendant and scows of the Brooklyn Navy Yard dump materials consisting of refuse and some garbage at the City's dumping point (R. Sp. M., p. 34).

While reciting this evidence the Special Master did not make any specific findings of fact in relation thereto. It was offered by the defendant in support of its contention set forth in its second separate defense in its amended answer both in the form of a proposed finding of fact (66) and in the form of a proposed conclusion of law (20) that by reason of the deposit in substantial quantities of garbage, cellar dirt and unsanitary sewage in the Atlantic Ocean by agencies other than the defendant at points much nearer to the coast of the plaintiff or no further therefrom than where deposits of garbage and refuse were made by defendant, it is impossible to determine whether such garbage and refuse deposited by defendant in said ocean off the coast of the plaintiff reaches its waters and beaches in substantial quantities.

(It is to be noticed that the City of New York does not contend that *if* its garbage reached New Jersey's beaches it is excused because garbage and refuse from other sources also reached those beaches. The contention of the defendant is rather that in the state of the proof it cannot be determined definitely whether the City's garbage reaches New Jersey's beaches in substantial quantities.)

In spite of the evidence of the deposit of garbage and refuse in the ocean by agencies other than the defendant much nearer New Jersey's beaches than deposits made by the defendant in the ocean, the Special Master found that large masses of floating and submerged garbage dumped by defendant were carried by winds and water upon the plaintiff's shores (R.Sp.M. p. 27); that the defendant has delayed unreasonably in adopting a proper method of the disposal of its garbage and refuse (R.Sp.M. p. 30); that the amount of garbage reaching plaintiff's shores from coastwise and other vessels and other causes is negligible in comparison with that being dumped by defendant and reaching plaintiff's shores (R.Sp.M. p. 36); that garbage and refuse dumped by defendant's scows reaches plaintiff's waters and shores and do great injury to fishing and bathing in said waters (R.Sp.M. p. 41); that the act of Congress of June 29, 1888 (29 Stat. 209, as amended) and compliance with permits issued to the defendant thereunder by the Supervisor of the Harbor furnishes no defense to defendant nor relieves it from the effect of the public nuisance created by its action in dumping its garbage at sea (R.Sp.M. p. 49); that dumping of garbage at sea by defendant, as described in the report, results in a public nuisance and that plaintiff and communities affected should not be required to tolerate the same (R.Sp.M. p. 53); that even if the plaintiff is held to strict proof the objectionable conditions on the beaches and in the adjacent waters of the plaintiff are caused by defendant's dumping its garbage and refuse at sea as described in the report (R.Sp.M. pp. 56-57); that the parties to the action are subject to the decrees of the court and the property affected is within the United States (R.Sp.M. p. 58); that the court has jurisdiction and that the plaintiff is entitled to relief in accordance with the prayer of the bill of complaint from

the nuisance created by the defendant upon the beaches and property of the plaintiff (R.Sp.M. p. 59).

The defendant has filed exceptions to the above findings of fact and conclusions of law as well as to others and to the recommendations for a decree contained in the report of the Special Master. It has also filed exceptions to the Special Master's refusal to find certain proposed findings of fact and conclusions of law submitted by defendant. The plaintiff has not filed any exceptions; therefore, such of the Master's findings of fact and conclusions of law as are unfavorable to plaintiff's contentions must be regarded as accepted by the plaintiff.

That the above quoted findings of fact and conclusions of law and other particular conclusions not specifically referred to above are not justified is contended in detail in the following argument.

SUMMARY OF THE DEFENDANT'S ARGUMENT ALLEGING ERROR ON THE PART OF THE SPECIAL MASTER.

I.

The Special Master erred in overruling defendant's contention that the dumping into the Atlantic Ocean of garbage and refuse by the City of New York at points designated by the Supervisor of the Harbor of New York, distant from the coast of New Jersey of from ten to twenty-two miles, constitutes the deposit of such garbage and refuse not in navigable waters of the United States, but in the high seas more than a marine league from the beaches and territorial waters of the State of New Jersey, over which this Court has in this case no authority, control or jurisdiction.

A. Character of the plaintiff's claims.

B. The Master erred in his findings and conclusions that the facts in this case present a justiciable controversy over which this Court has jurisdiction and in making all subordinate findings and conclusions in support thereof and in failing and refusing to find and conclude as requested by defendant in this regard.

(1) Jurisdiction lacking because the situs of the nuisance is beyond the territorial jurisdiction of this Court.

(2) The character of the case is such that the controversy is not justiciable.

C. Plaintiff's failure to prove that the defendant dumped its garbage and refuse into the navigable waters of the United States.

II.

The Master erred in his findings of fact and conclusions of law to the effect that garbage and refuse in large quantities dumped by the defendant in the Atlantic Ocean more than a marine league from the shores and waters of the plaintiff is driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance, to the great injury of the plaintiff's rights and property.

A. The Special Master erred in failing to find that the plaintiff must prove its case by clear and convincing evidence and in finding that even if such rule applied conditions on plaintiff's beaches and in its waters were shown to be due to defendant's acts.

(1) Weakness of the plaintiff's evidence in regard to the dropped bottles.

(2) Weakness of the proof that garbage, the dumping of which from city's scows was actually seen, ever reached plaintiff's shores.

(3) The plaintiff's proof was weakened by the absence of expert evidence to counteract testimony as to the influence of the tides in retarding garbage dumped ten to twenty miles from the plaintiff's beaches from reaching the same.

III.

The Master erred in finding that compliance by the defendant in respect to the locality in which its garbage was dumped with permits issued by the Supervisor of the Harbor of New York, under authority of the Act of Congress on June 25, 1888 (25 Stats. 209) as amended (Title 33, Chap. 9, Secs. 441-451, U. S. Code), does not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

IV.

The Master erred in finding that such garbage as reaches the plaintiff's shores from dumping by coast-

wise and other vessels and from other sources, is negligible in comparison with that dumped by defendant and reaching plaintiff's shores.

V.

The Master erred in his findings and conclusions that the defendant has delayed for an unreasonably long time in erecting incinerators to dispose of its garbage.

VI.

The Master erred in finding that on all of the evidence a case for equitable relief in favor of the plaintiff was made out.

A. Complete Failure of Proof by Plaintiff as to loss of property or rental values in its seashore communities.

B. Counterbalancing evidence for defendant of the Summer popularity, growth of the communities and investments therein and increase in assessed values during the years while Defendant is charged with fouling Plaintiff's beaches and waters.

CONCLUSION.

The findings and conclusions of the Special Master should be overruled; the proposed findings of fact and conclusions of law of the defendant approved; the recommendations of the Special Master for a decree should be disregarded and a decree should be entered dismissing the bill of complaint.

I.

The Special Master erred in overruling defendant's contention that the dumping into the Atlantic Ocean of garbage and refuse by the City of New York at points designated by the Supervisor of the Harbor of New York, distant from the coast of New Jersey of from ten to twenty-two miles, constitutes the deposit of such garbage and refuse, not in the navigable waters of the United States, but in the high seas more than a marine league from the beaches and territorial waters of the State of New Jersey, over which this Court has in this case no authority, control or jurisdiction.

A. Character of the plaintiff's claims.

The plaintiff claimed that the defendant's garbage dumped "into the navigable waters of the United States" (complaint, par. 11) is driven by the winds and tides upon the beaches of the plaintiff where it pollutes the sea and land until removed (complaint, par. 14) and that the necessary removal thereof by municipalities and citizens of the plaintiff requires the expenditure of more than $100,000 annually (complaint, par. 15). The complaint also alleges that such garbage is poisonous and injurious to human beings and to fish and fish life; obstructs and impedes the navigation of the waters of the United States; injures and destroys the nets of fish pounds and renders the waters unfit for fishing, boating or bathing (complaint, par. 16); that such dumping creates a public nuisance impairing the wholesomeness and safety of said waters, beaches and shore front facilities of the plaintiff and its municipalities thereby damaging plaintiff's property and seriously menacing the health, safety and welfare of the plaintiff and its citizens (par. 17). All of these

allegations are denied by the defendant (original and amended answers, paragraphs "Second" and "Third").

In defendant's opinion it is essential to the success of the plaintiff's case that there should be a finding that the defendant dumped its garbage and refuse into the navigable waters of the United States for not only is this denied by the defendant as aforesaid, but in its First Defense (see amended answer, paragraph "Fifth"), it alleges that its dumping was not within the navigable waters of New Jersey *nor within the navigable waters of the United States* but on the high seas at points in excess of one marine league from the shores of New Jersey and that therefore this court has no authority to enjoin the defendant from such dumping.

Although the Special Master found that the dumping areas used by the defendant are situated at distances of 8, 12 and 20 miles southeast of Scotland Lightship and 10, 12½ and 22 miles from the shores of New Jersey (R. Sp. M., p. 20), we are unable to discover any finding of fact or conclusion of law to the effect *that the dumpings are into the navigable waters of United States as alleged by the plaintiff; or take place on the high seas without the navigable waters of this country as alleged by the defendant.* In other words, the report is silent in both directions on this very important matter.

It is true that there is a finding of fact on page 50 of the Master's report that "some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area." We shall have more to say about this finding later, but it is sufficient to state here that it does not fix the place of any of these so-called short dumpings and as a matter of

fact they cannot be located as taking place within the 3-mile limit.

Before going further in this argument it should be noted that claims for relief from several different kinds of injuries are set forth in the complaint.

Obstruction of navigation of fishing and other boats and injuries to fishing rights and fish nets due to the dumping of garbage in the ocean by the defendant are maritime torts (*Crappo* v. *Kelly*, 16 Wall., 610, 623; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S., 52, 58). Usually the forum for the redress of such injuries is an admiralty court (*The Armorica*, 189 Fed., 503, 504; *The Blackheath*, 195 U. S., 361; *The Raithmoor*, 241 U. S., 166). Whether these alleged injuries should be considered in this action if the finding relating to the defendant's responsibility therefor is sustained, we question. The other alleged injuries are land torts with injuries to bathing rights on the dividing line.

Practically all of the alleged injuries concerning which findings were made by the Special Master in favor of the defendant were *consequential* rather than direct. What will be considered direct and what consequential injuries or damages seems to vary somewhat with the circumstances, but the general rule has been well expressed by the Supreme Court of Georgia in the head-note or syllabus by the court in the case of:

> *City of Dublin* v. *Ogburn*, 142 Ga., 840 (83 S. E., 939).
>
> "Direct damages are such as follow immediately from the act done. Consequential damages are such as are the necessary and connected effect of the tortuous act though to some extent depending on other circumstances."

Here the dumping points were located many miles from the places of injury. The Master found that the (R. Sp. M., p. 46) dumping "was done at eight, twelve and twenty miles according to the season of the year, southeast by east from Scotland Light" and that (R. Sp. M., p. 20) the dumping areas are approximately ten, twelve and a half and twenty-two miles, respectively, from the shore of New Jersey. In order to produce the injuries alleged to have been suffered it was necessary for a combination of circumstances to exist and coincide. The Master found (R. Sp. M. "(10)", p. 18):

> "The deposits of garbage and refuse on the beaches occur when the winds are from the east or northeast * * *. Sometimes the garbage and refuse is brought in by southeast winds. The heavier deposits occur on some of the beaches four or five times a season, and occur frequently throughout the year, varying in number with the different beaches."

Also (R. Sp. M. "(16)", p. 25):

> "Such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement. The mass moves at times westward and northward or towards the shores of New Jersey or Long Island, according to the direction and velocity of the wind."

(There is an exception to this finding for its omission to take into consideration the influence of the tides).

Yet, as found by the Master (R. Sp. M. "(15)", p. 24.

> "The dumping goes on each day except when the weather prevents taking the scows to sea * * *."

Even plaintiff's chief investigator, Smack, who, the Master found, made over 30 trips to the dumping grounds (R. Sp. M., p. 25) testified (Pr. A. 15):

> "Most of the time we went out, we caught a wind from the south, which carried it (the garbage) in the direction of the Long Island shore."

It is, therefore, apparent that it is far from the natural and probable consequence that most of any garbage dumped, or that garbage dumped on a majority of occasions, will ever reach defendant's shores or waters assuming (without admitting) that it is defendant's garbage which finally reaches there in substantial quantities as found by the Master. We think, therefore, that there can be little doubt but that the injuries alleged herein are *consequential* and not direct. Authorities in analogous cases of trespass and nuisance sustain the contention.

> *Chipman* v. *Palmer*, 77 N. Y., 51;
> *Gordon* v. *Ellenville & Kingston R. R. Co.*, 195 N. Y., 137;
> *Burt Olney Canning Co.* v. *State*, 230 N. Y., 351;
> *Swain* v. *Tennessee Cop. Co.*, 111 Tenn., 430 (78 So. W., 93).

In the *Chipman* case, *supra*, where the alleged injury was due to the pollution of a stream by sewage thrown therein by an upper riparian proprietor which injured the

boarding house business of a lower riparian proprietor, the Court of Appeals of New York said (page 53):

> "The right of action arises from the discharge into the stream, and the nuisance is only a consequence of the act."

In *Swain* v. *Tennessee Copper Co., et al. supra,* we have another angle of the famous controversy which finally ended in *Georgia* v. *Tennessee Copper Co.* (206 U. S., 230). The action was to recover damages for a nuisance created by several defendants in the operation of their smelting plants. Judgments sustaining demurrers by the defendants were affirmed in the Supreme Court of Tennessee, the Court stating (78 S. W., page 95):

> "This rule (that separate creators of a nuisance could not be held liable for damages) has been held peculiarly applicable to actions for the recovery of damages caused by nuisances of the character of that in question, resulting from the conduct of a number of persons acting independently of each other because the damages in such case are not the direct and necessary consequences of the wrongful conduct of the defendants, but merely the natural results, known as 'consequential damages,' for which no action will lie unless they are special (that is, not common to the general public), but which must be specially averred and proven."

We know of nothing in the case of *Huffmire* v. *Brooklyn,* 162 N. Y., 584, cited by the Master at page 49 of his report which overrules the doctrine of these cases. There the plaintiff's oyster bed was in the bottom of a creek into which defendant's sewer emptied only 300 feet

therefrom. It was, therefore, inevitable that the sewage should reach the oyster bed and the injury may well have been considered direct. The discharge of sewage considered in *Haskell* v. *New Bedford*, 108 Mass., 208 (R. Sp. M., p. 48) and *Brayton* v. *Fall River*, 113 Mass., 218, was either directly upon plaintiff's property or within a few feet thereof. The injuries were consequently direct and the same is probably the way in which the court treated them in *Noonan* v. *City of Albany*, 79 N. Y., 476 (R. Sp. M., p. 49).

B. The Master erred in his findings and conclusion that the facts in this case present a justiciable controversy over which this Court has jurisdiction and in making all subordinate findings and conclusions in support thereof, and in failing and refusing to find and conclude as requested by defendant in this regard.

(1) Jurisdiction lacking because the situs of the nuisance is beyond the territorial jurisdiction of this court.

(It must be constantly borne in mind that the Special Master found as set forth in the statement of facts that the dumping areas and the place where defendant dumped its garbage were at distances of 8, 12 and 20 miles southeast of Scotland Light Ship, and 10, 12½ and 22 miles respectively from the shore of New Jersey (R. Sp. M., pp. 20, 46).

Twelve separate exceptions were taken under this heading in the section designated "A" of defendant's exceptions.

Exception No. 1 objects to so much of the Conclusion of Law set forth under the heading, "Parties and Jurisdiction" (R. Sp. M., p. 9) as concludes that the case presents a justiciable controversy over which this court has jurisdiction.

Exception No. 3 is to the same effect.

Exception No. 11 is an exception to the failure and refusal of the Special Master to conclude as a matter of law (Defendant's Proposed Conclusion of Law 15) that no justiciable controversy is presented.

Exception No. 1a is an objection to so much of the Special Master's Report as finds or concludes that both the aggrieved and the offending parties are subject to this court's decrees.

Exception No. 7 is an objection to the failure of the Special Master to find as requested by the defendant (Proposed Finding of Fast 53) that the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage are not within the navigable waters of the United States.

Exception No. 8 is an objection to the failure of the Special Master to conclude the same thing as a matter of law.

Thus in every possible way in which the contention of the defendant, and the alleged error of the Master could be raised, is it presented to this Court.

Briefly, our contention is that this allaged nuisance was committed by this municipal corporate defendant (if at all) outside the territorial limits of the United States and therefore, in the absence of statute, outside of the jurisdiction or authority of this Court to restrain the same by injunction herein.

It is said in the course of the opinion in

Central Railroad Co. v. *Jersey City*, 209 U. S. 473, 479

"* * * boundary means sovereignty, since in modern times sovereignty is mainly territorial unless a different meaning clearly applies."

The territorial jurisdiction of the United States when unaffected by statute has in no way been better defined than in

Cunard Steamship Co. v. *Mellon*, 262 U. S. 100, 122-123.

"It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays and other enclosed arms of the sea along its coast and a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles. *Church* v. *Hubbart*, 2 Cranch, 187, 234; *The Ann*, 1 Fed. Cas., p. 926; *United States* v. *Smiley*, 27 Fed. Cas., p. 1132; *Manchester* v. *Massachusetts*, 139 U. S. 240, 257-258; *Louisiana* v. *Mississippi*, 202 U. S. 1, 52; 1 Kent's Com., 12th ed., * 29; 1 Moore International Law Digest, § 145; 1 Hyde International Law, §§ 141, 142, 154; Wilson International Law, 8th ed., § 54; Westlake International Law, 2d ed., p. 187, *et seq.*; Wheaton International Law, 5th Eng. ed (Phillipson), p. 282; 1 Oppenheim International Law, 3d ed., §§ 185-189, 252."

See also,

United States ex rel. Claussen v. *Day*, 279 U. S. 398, 401;
The George & Earl, 30 Fed. (2nd) 441, 443.

It is said in

Lord v. *The Steamship Co.*, 102 U. S. 541, 544:

"The Pacific Ocean belongs to no one nation but is the common property of all."

This does not mean that Congress cannot, by legislation, extend these limits in relation to subjects of peculiar interest to the country and its policies and within the powers of that body, such as prohibition enforcement.

> *Cunard Steamship Co.* v. *Mellon, supra,* page 129; *Maul* v. *United States,* 274 U. S. 501.

We also refer the Court to *Jones* v. *United States,* 137 U. S. 202, and *The James G. Swann,* 50 Fed. 108. In the *Jones* case, *supra,* the question involved was the power of the United States to extend by legislation the provisions of an act punishing murder on the high seas to the Guano Islands. The power of Congress was sustained and the Court said (page 212):

> "Who is the sovereign *de jure* or *de facto* of a territory is not a judicial, but a political question, the determination of which by the legislative and executive departments of any government conclusively binds all judges, as well as all other officers, citizens and subjects of that government. This principle has always been upheld by this court and it has been affirmed under a great variety of circumstances" (citing authorities).

The case of *The James G. Swann, supra,* involved a libel in admiralty against a vessel charged with violation of a United States statute against killing seals in Behring Sea. In this case the seals were killed some seventy miles from land and the District Court said (pages 110-111):

> "As our government is constituted, the President and Congress are vested with all the responsibility and powers of the government for determination of questions as to the maintenance and extension of our

national dominion. It is not the province of the court to participate in the discussion or decision of these questions, for they are of a political nature and not judicial."

These contentions of ours are sought to be avoided by the finding of the Special Master that the property affected is within the United States.

We have excepted to that finding (Exception No. 2). While we shall assume, for the purpose of argument, that the Master meant that the property injured was within the United States, we do not think that his phrasing was apt. It is not by any means beyond the realm of possibility that the property affected might be the scows of the defendant which dumped garbage from ten to twenty miles off shore.

Also there was much testimony in the record concern- the injury to lobster pots by direct dumping operations far beyond the three mile limit (Pr. A. 46, 47, 77, 318, 347-348, 351, 375, 398). However, the Master made no specific finding as to injury to this kind of property.

Still, even if the beach property injured (in the sense that rights in relation thereto or persons thereon were injuriously affected) *it seems to be thoroughly well settled that in cases of nuisance or trespass the locality or place where the act occurs which makes possible the nuisance or trespass is the situs of the tort.*

Horne, et al, v. *City of Buffalo, et al,* 49 Hun. (N. Y.) 76;

Chipman v. *Palmer,* 77 N. Y. 51;

People v. *International Nickel Co.,* 168 App. Div., 245, aff'd. on opinion below 218 N. Y., 644;

Ladew v. *Tennessee Copper Co. et al,* 179 Fed., 245 (aff'd. on another question 218 U. S., 357).

In the *Horne* case, *supra*, the plaintiff, suing as the Board of Water Commissioners of the Village of Suspension Bridge, brought an action in Niagara County (New York) to restrain the defendant City from dumping sewage and refuse matter into the Niagara River which polluted its waters at Suspension Bridge and rendered the same unfit for domestic use. The defendant City, which was located in Erie County, made a motion under the authority of Section 982 of the Code of Civil Procedure of New York, to change the place of trial from Niagara to Erie County, where the objectionable deposits were made.

The opinion states (pages 77-78 and 79):

"By section 982 it is provided that an action for a nuisance must be tried in the county in which the subject of the action, or some part thereof is situated. * * * The subject of an action, as that phrase is used in this section, is that which is to be directly affected, in case the relief demanded by the plaintiff is granted, as in an action of ejectment the land described in the complaint or in an action for a nuisance the object or structure mentioned and alleged to have been unlawfully constructed or erected, or the action, practice or doings of the defendant, which are charged to be illegal and are stated in the complaint as the foundation for the relief demanded.

In most instances the subject of a nuisance has a situs and is in some way or manner connected with, or attached to the realty and is capable of a local description, so that the precept which may be issued by the court to carry its judgment into effect, may designate the object or structure, which is to be abated by the officer to whom the precept is directed. By the common law an action for a nuisance is re-

garded as local in its nature and the venue is required to be laid in the county where the nuisance was situated. *(M. and L. N. Co.* v. *Douglas,* 2 East, 502; *Warren* v. *Webb,* 1 Taunt., 379; *Vt. and Mass. R. R. Co.* v. *Orcutt,* 16 Gray, 116; *Queen* v. *Cotton,* 102 Eng. Common Law [1 Ellis & E.], 202.

* * * * * * * *

The intention of the legislature to make an action for the abatement of a nuisance local, is clearly manifested by classifying it with actions which are, in their nature, local, such as ejectment and waste.

I am clearly of the opinion that the nuisance described in the complaint is situated in the county of Erie at the place where the defendants are in the habit of dumping foul substances in Niagara river."

We have already referred to the question involved in the case of *Chipman* v. *Palmer, supra.* We again quote from the opinion at page 53 as follows:

"It (the injury) was occasioned by the discharge of sewerage from the premises of the defendant and other owners of lots into the creek separately and independently of each other. The right of action arises from the discharge into the stream and the nuisance is only a consequence of that act. The liability commences with the act of the defendant upon his own premises, and this act is separate and independent of and without and regard to the act of the others."

In *People* v. *International Nickel Co., supra,* the defendant was indicted for the commission of an alleged nuisance because of the escape of deleterious fumes, gases and odors emitted from its industrial plant and carried

into the State of New York from the State of New Jersey where the plant was located. The defendant demurred to the indictment and the demurrer was sustained from the lowest court of New York to the highest. In the course of the opinion of the Appellate Division it is said, p. 247:

> "It is the maintenance of the thing itself, the misuse of the plant, that is the nuisance. The noxious matters given off as a result of its operation are the evidences and effects of the nuisance. (*People* v. *Central R. R. Co. of N. J.*, 42 N. Y., 283; *State* v. *Babcock*, 30 N. J. L., 29; *Matter of Eldred*, 46 Wis., 530.)
>
> The situs of this nuisance is in another State."

(The court also suggested that a remedy might be had by means of a suit by the State of New York in a controversy justiciable in the Supreme Court of the United States [*Georgia* v. *Tennessee Copper Co.*, 206 U. S., 230]. Such a suggestion might be perfectly apt in that case because the alleged nuisance took place within the territorial jurisdiction of the United States Supreme Court, which, we contend, is not so here.)

Ladew, et al. v. *Tennessee Copper Co.* (and *Ducktown S. Copper & Iron Co., Ltd.*), *supra*, also involved the famous controversy over efforts to restrain the defendants from polluting the atmosphere with poisonous fumes from their furnaces located in Tennessee and injuring property of the plaintiffs located in Georgia. The action was brought in the United States Circuit Court for the Eastern District of Tennessee. The defendants moved to dismiss. In connection with the motion of the Ducktown Company, it was said by Judge Sanford (p. 253):

> "While an action to abate or restrain a nuisance is of a local nature and can only be maintained in

a district having the proper territorial jurisdiction, the venue of such action is in the district where the nuisance itself is located."

The learned Judge then proceeded to discuss several cases to which we shall hereafter refer, and also the *Horne* case, *supra*, and summed up his conclusion as follows (p. 254):

"While none of these cases, except the *Horne* case, represented the precise situation in the present case, where the property constituting the nuisance lies in one district and the injured property in another, the reasoning in the *Ward* case that, where the court 'had no power over the local object inflicting the injury,' its abatement was beyond the jurisdiction of the court and shows conclusively that the test of local jurisdiction in an action to abate a nuisance is the situs of the object inflicting the injury and not that of the object injured."

See also:

Northern Indiana R. R. Co. v. *Michigan Central R. R. Co.*, 15 How., 233;
Mississippi & Missouri R. R. Co. v. *Ward*, 2 Black, 485;
McGowan v. *Columbia River Packers' Ass'n.*, 245 U. S., 352.

In *Mississippi & Missouri R. R. Co.* v. *Ward*, *supra*, Ward sued the defendant company, a citizen of Illinois, in the District Court for Iowa to restrain the continuance of an alleged nuisance due to the manner of the construction of a bridge over the Mississippi River. The boundary between Iowa and Illinois was through the center of

the river. The main channel of the river and the alleged obstruction thereto was on the Illinois side. The plaintiff, Ward, operated steamboats which he alleged were injured by this obstruction to the main channel. In holding that the District Court of Iowa had no jurisdiction of the subject of the action the Supreme Court said (p. 194):

> "An indictment could only have been prosecuted against the owner for keeping up the nuisance in Illinois in the Courts of that State, because the nuisance was a trespass and crime against the laws of Illinois, and the injuries to the complainant's boats giving him the privilege to sue and abate the obstruction was as local as the public right to indict. He asks nothing from the person of the defendant, but seeks to remove a local object, because he has sustained special damage from that object.
>
> The District Court has no power over the local object inflicting the injury; nor any jurisdiction to inquire of the facts, whether damage had been sustained, or how much. These facts are beyond the Court's jurisdiction and powers of inquiry, and outside of the case."

We realize, of course, that the district courts of the United States have a jurisdiction limited by statute in respect of the area within which they operate. If, however, the jurisdiction of this court is by a long line of precedents and by public policy limited to the territorial boundaries of the country, unless enlarged by statute in appropriate cases, then the reasoning of the above cases applies.

If the situs of the object inflicting the injury is the controlling factor and that is outside the territorial limits

of the United States, why is not the matter of its abatement outside the jurisdiction of this court.

Some interesting observations pertaining to these cases are also contained in the opinion of Judge Hough in deciding the case of *United States* v. *Newark Meadows Imp. Co.*, 173 Fed., 426. There was an indictment there for a violation of the New York Harbor Anti-Dumping Statute (Act of June 29, 1888, 25 Stat., 209 as amended, now Title 33, Chap. 9, U. S. Code, Sections 441-451).

That statute was discussed at length in the Special Master's Report under heading, "Some Questions of Law —2. Permits" (pages 41-49). We deem it, therefore, unnecessary to set it forth in full here, although it will be referred to more specifically hereafter.

The dumping under consideration in that case took place 2¼ miles from the coast of New Jersey. The indictment was demurred to in order to test the jurisdiction of the Circuit Court for the Southern District of New York. The Court held (page 427):

> "The crime (of dumping) is committed where the scow is dumped."

It was consequently held that as the dumping took place in New Jersey the court had no jurisdiction. The boundary agreement and treaty between New York and New Jersey was discussed and it was also said (page 429):

> "That the territorial jurisdiction of the United States extended a marine league from the coast of New Jersey was asserted by the trial court and approved by the Supreme Court in *Wibory* v. *United States*, 163 U. S., 632, 16 Sup. Ct., 1127, 1197, 41 L. Ed. 289."

The Attorney General of the United States long ago (January 6, 1892), advised the Secretary of War that under the then state of the law and that statute, that deposits of ballast more than a marine league from the shore could not be prevented, saying:

> "I know of no statute authorizing such interference nor any power to so interfere in the absence of statute."

(26 Opinions, Attorney General, 293).

This is re-enforced by the following excerpt from the opinion of the Supreme Court in the case of

Williamette Iron Bridge Co. v. *Hatch,* 125 U. S., 1, 8:

> "The power of Congress to pass laws for the regulation of the navigation of public rivers, and to prevent any and all obstructions therein, is not questioned. But until it does pass some such law, there is no common law of the United States which prohibits obstructions and nuisances in navigable rivers, unless it be the maritime law, administered by the courts of admiralty and maritime jurisdiction. No precedent, however, exists for the enforcement of any such law; and if such law could be enforced (a point which we do not undertake to decide), it would not avail to sustain the bill in equity filed in the original case There must be a direct statute of the United States in order to bring within the scope of its laws, as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the States."

See also—

New Jersey v. *Sargent*, 269 U. S., 328.

It was said at page 337 of the opinion:

> "That the power to regulate interstate and foreign commerce which the Constitution vests in Congress includes the power to control, for the purposes of such commerce, all navigable waters which are accessible to it and within the United States whether within or without the limits of a state."

It might well be that for certain purposes Congress could regulate transactions of citizens even without the territorial limits of the country as it seems to have done in the enforcement of the Prohibition Laws. Furthermore, it would seem that garbage dumping in the ocean might be regulated under the commerce power in the same way as has been done through the establishment of quarantine stations (*Morgan* v. *Louisiana*, 118 U. S., 455, 465).

If the above doctrine applies to this case then we do not see how the plaintiff can succeed. In so saying we do not wish to be thought to have overlooked certain cases which hold that where equity has jurisdiction of the person of the defendant it may give a personal decree against him, although the *res* of the controversy is beyond the jurisdiction of the court.

These cases, however, seem to be based on the principle that the court's decree can be enforced personally by contempt proceedings if disobeyed, or in some other personal manner.

A recalcitrant municipal corporation, however, cannot be imprisoned for contempt, or, in the absence of statute, fined. Its public property cannot be taken for the pur-

pose of collecting judgments or enforcing decrees against it. (*Workman v. New York City*, 179 U. S., 552, 565).

While its works of art, such as statutes or pictures might possibly be seized, it is hardly thought that this is in contemplation of the provision for the personal enforcement of equitable decrees.

Is it to be vicariously compelled to act through proceedings against its Mayor, or its Commissioner of Street Cleaning, or its Sanitation Commission? If so, why were these officials not made parties? The statutory provision in force in May, 1929, when this action was begun provided (See Appendix A), that as to the boroughs of Manhattan, The Bronx and Brooklyn:

> "the commissioner of street cleaning shall have cognizance and control:
>
> 1. Of the sweeping and cleaning of the streets of the city and of the removal, or other disposition as often as the public health * * * may require, of ashes, street sweepings, garbage and other light refuse and rubbish * * *."
>
> (Sections 533 and 534 Greater New York Charter, being Chapter 378 of the Laws of 1897 as amended by Chapter 466 of the Laws of 1901).

On December 1st, 1929, this jurisdiction (except that it was applicable to the entire city and not the three boroughs mentioned), was transferred to the Sanitary Commission as head of the Department of Sanitation (Greater New York Charter, Section 605-a as added by Local Law No. 13 of 1929 [Deft.'s Ex. 5], adopted by the Local Legislative Body of the City of New York). In other words, individual officials and not the city were charged with the duties mentioned.

While it might not have been necessary to substitute the Sanitary Commission for the Commissioner of Street Cleaning, if the latter had been made a party originally when the present action was begun, we know of no reason why when the Charter plainly prescribed that the duty of disposing of garbage was *upon the Commissioner of Street Cleaning,* he should not have been made a party, if the argument is to prevail that action on the part of the defendant can be compelled *in personam* through the coercing of some of its officials who are not parties to the suit. In this respect we submit that a municipal corporation differs from a private corporation.

(2) The character of the case is such that the controversy is not justiciable.

The Special Master found, as we have heretofore stated, that the controversy was justiciable under Article III, Section II of the Constitution (R. Sp. M., pages 9, 59). That section provides in part:

> "The judicial Power shall extend to all Cases in Law and Equity * * * to controversies between two or more States; * * * between a State and citizens of another State * * *. In all cases * * * in which a State shall be a party, the Supreme Court shall have original jurisdiction."

It is not every case, however, which, just because it involves a sovereign State as plaintiff and a citizen of another State as defendant, is justiciable under this provision, even though it may apparently be so in form.

New Jersey v. *Sargent,* 269 U. S. 328.

Therein the Court stated in discussing its authority to decide a question between a State and a citizen under said Constitutional provision (page 331):

> "But according to the course of proceeding under this head in equity, in order to entitle the party to a remedy, a case must be presented appropriate for the exercise of judicial power";

Earlier cases have more definitely discussed the question of jurisdiction under this head.

> *Cohens* v. *Virginia,* 6 Wheat., 264, 398-399;
> *Wisconsin* v. *Pelican Insurance Co.,* 127 U. S., 265;
> *Massacusetts* v. *Mellon,* 262 U. S., 447, 480-481.

In the course of the opinion of the Court in *Wisconsin* v. *Pelican Insurance Co., supra,* it is said (p. 289):

> "As to 'controversies between a State and citizens of another State'. The object of vesting in the courts of the United States jurisdiction of suits by one State against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff State were compelled to resort to the courts of the State of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay, in *Chisholm* v. *Georgia,* 2 Dall., 419, 475; Story on the Constitution, Secs. 1638, 1682. The grant is of 'judicial power', and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one State, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other State at all."

The above was quoted with approval in *Massachusetts* v. *Mellon, supra,* at pages 480-481.

It seems to us clear, therefore, under the previously cited authorities that the instant case relates to no controversy over which the courts of New York or the District Courts of the United States would have any jurisdiction because the tort had a local *situs* wholly outside its or their boundaries.

The courts of both the States of New Jersey and New York, as well as of other localities, have always held that they had no jurisdiction over such controversies.

Hill v. *Nelson,* 70 N. J. Law, 376 (57 Atl., 411);
Karr v. *N. Y. Jewell Filtration Company,* 78N. J. Law, 198 (73 Atl., 132);
Watts v. *Kinney,* 6 Hill (N. Y.), 82, 87;
People v. *Central Railroad of New Jersey,* 42 N. Y., 283 (Writ of Error dismissed, 12 Wall., 455);
Sprague National Bank v. *Erie R. R. Co.,* 40 App. Div., 69, 72 (Appeal dismissed 170 N. Y., 577);
Brisbane v. *Pennsylvania R. R. Co.,* 205 N. Y., 431, 434;
Allen v. *Connecticut River Lumber Co.,* 150 Mass., 560;
Ellenwood v. *Marietta Chair Co.,* 158 U. S., 105, 108.

The opinion of the Court in *People* v. *Central Railroad of New Jersey, supra,* contains some interesting statements.

The complaint prayed for the abatement, as nuisances, of certain pier enlargements extending out from the New Jersey Shore into the Hudson River and for an injunction in connection therewith. The Court of Appeals of New York held that it had no jurisdiction over the

subject matter of the action and that defendant's contention in relation thereto was not waived by its general appearance, and said (42 N. Y., at page 289):

> "The cause of action set forth in the complaint is clearly one of equitable cognizance; and as the jurisdiction of the Supreme Court is co-extensive with the boundaries of the State, it clearly had jurisdiction of such cause of action, if the place where the nuisances complained of were erected and existed was within the territorial limits of the State.
>
> It is quite clear, that upon no other ground have the courts of this State any power, either in equity, or by indictment and criminal proceedings, to abate a nuisance. The *locus in quo* must be within the legal limits of some county of the State, and the process for the abatement of such nuisance must go to the proper sheriff for execution, within the limits of his county."

The opinion also discusses the question of the boundary between the two States under the Treaty between them and what constitutes the shore of New Jersey (pages 290-299); and also the difficulty of enforcing any judgment such as was rendered in the lower court (page 306).

Recently, legislation has been adopted in New York making some of the New York cases cited above obsolete in respect to the bringing of actions in the State Courts for certain kinds of injuries to property lying outside the State.

See—

> Chapter 930, Section 1, Laws of 1920, adding Section 982-a to the Code of Civil Procedure, now Section 536 of the Real Property Law (Chap. 50 of the Consolidated Laws).

The section reads as follows:

> "§536. **Actions relating to Real Property situate without the State.** An action may be maintained in the courts of this state to recover damages for injuries to real estate situate without the state, or for breach of contract or of covenants relating thereto, whenever such an action could be maintained in relation to personal property without the state. The action must be tried in the county in which the parties or some one thereof resides, or if no party resides within the state, in any county."

This provision would, in our opinion, give the plaintiff no right to bring its equitable action, similar to the present suit, in the courts of New York State even if it cared to do so, because

(1) It gives a right *to recover damages only* for injuries to extra territorial real estate;

(2) It relates to a right to recover damages for injury to real property without the State, but not where the cause of the injury was the commission of an alleged nuisance wholly without the United States, i.e., on the high seas, beyond the three-mile limit.

(3) The alleged injury in the instant case is not direct but consequential and the cause of action for an injury to real estate is joined with others for alleged injuries to navigation, fishing and bathing rights.

The fact that the plaintiff might be without remedy in the instant case, if we are correct in our arguments,

is no reason why the jurisdiction of this Court should be improperly extended to protect it.

In both of the New Jersey cases cited in the last group it was stated that the plaintiffs therein would doubtless have no remedy except by means of the actions then before the Court but the Court held that this fact did not affect the question and denied relief.

C. Plaintiff's failure to prove that the defendant dumped its garbage and refuse "into the navigable waters of United States."

Plaintiff makes this allegation in Paragraph "11" of the complaint. If it is an essential allegation of fact then its failure to prove such fact would be fatal to its cause of action. All of the following paragraphs of the complaint charging the commission of wrongs and nuisances on the part of the defendant against the plaintiff, refer to "said garbage and refuse." In other words, it is the garbage *there* dumped that is charged as being the nuisance and the results alleged are all dependent upon the allegations of paragraph 11 in this regard.

The Special Master made no specific finding on the subject. What can be inferred concerning the matter from the Master's finding at the end (page 41) of the section of his report designated "Some Questions of Law—1. Trespass", we do not know.

Plaintiff contended before the Master that the boundaries of the State of New Jersey extended three nautical miles seaward from the southern portion of a line drawn from Montauk Point, New York, to Cape May, New Jersey, beginning at a point thereon where it was intersected by the boundary line (extended) between New York and New Jersey. The Master found against this contention and against the claim of trespass, stating (page 41):

> "I think the established rule of the common law should be accepted in determining the territorial limits of New Jersey in the soil under water and that its claim that the dumping of garbage is upon its property is not sustained."

The Special Master having made quotation on page 39 of his report, from the case of *Cunard Steamship Co.* v. *Mellon* (262 U. S., 100, 122) in support of his conclusion, we fail to appreciate why he avoided deciding the more important question and concentrated on the less important.

The case just referred to was a decision relating to the territorial jurisdiction *of the United States* as being its land area and the three-mile belt of water extending around the same.

We contend, therefore, that the allegations of paragraph "11" of the complaint, relating to the place of dumping of garbage and refuse, were material and essential to the cause of action which the plaintiff has chosen to plead; that such allegations amount to a mixed statement of fact and law, and so far as the fact was not proved nor found, that there was a fatal variance between pleading and proof (which revealed that dumping was at the points found by the Master) for which the complaint should have been and should now be dismissed.

That the language of the allegation was deliberately chosen by the plaintiff is evident from the fact that it contended before the Special Master that the defendant's acts constituted a trespass upon the plaintiff's property (R.Sp.M., pp. 36-41). It could not have made that contention unless the dumping was within the territorial limits of New Jersey, and so of the United States. It was certainly

necessary to allege where the dumping took place, and the plaintiff chose to allege that fact in a particular manner. The defendant must have relied on the manner of the allegation as stating the locality, and that it was erroneous in fact, for otherwise it would not have controverted the same simply by a denal in the original answer. Hence, we see that the allegation of the place of dumping being essential and not having been proved as alleged, there was a fatal variance, since proofs must correspond with allegations.

Jones v. *Morehead,* 1 Wall., 155, 165;
Rubber Company v. *Goodyear,* 9 Wall., 788, 793;
Burton v. *United States,* 196 U. S., 283;
Brightson v. *Claflin Company,* 180 N. Y., 76, 81.

In *Burton* v. *United States, supra,* Burton (a senator) was indicted and tried in the Eastern District of Missouri for violation of Section 1782 of the Revised Statutes, for rendering services before a department of the government to a corporation in connection with a matter in which the United States was interested. The indictment charged payment to Burton at St. Louis, Missouri. The proof was that he was paid in Washington. It was held that there was a total lack of evidence to sustain certain counts in the indictment, and the Court said (page 304):

> "The court should have, therefore, directed a verdict of not guilty on these counts."

To sum up the Special Master should not have made the findings objected to in the exceptions above referred to. In regard to the other exceptions of Group I, we will point out briefly our objections thereto in Appendix B to this brief, setting forth the exceptions in order.

II.

The Master erred in his findings of fact and conclusions of law to the effect that garbage and refuse in large quantities, dumped by the defendant in the Atlantic Ocean more than a marine league from the shores and waters of the plaintiff, are driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance, to the great injury of the plaintiff's rights and property.

These alleged errors are called to the attention of this Court in a group of exceptions by the defendant under Section "B," numbered 12-43, inclusive. We refer at this time especially to exceptions 18-23, inclusive, 33 and 41-43, inclusive, the latter being failures to find defendant's proposed finding of fact 60, and to make defendant's requested proposed conclusions of law 17-19.

Exception 18 is to the conclusion (R. Sp. M., p. 27) at the end of the finding of fact "(16) Appearance and Movement," that large parts of these floating and submerged areas of garbage and refuse, *dumped by the defendant,* are driven and carried by the winds and water to and upon the shores of the plaintiff, etc.

Exception 19 is to the conclusion (R. Sp. M., p. 41) at the end of the section entitled, "1. Trespass," to the effect that such deposits of garbage so reaching plaintiff's waters and shores, "do great injury to fishing and bathing in such waters."

Exception 20 is to the conclusion (R. Sp. M., pp. 50-51), in the section entitled, "3. Nuisance," to the effect that the conditions charged in the complaint as due to the defendant's acts are, in fact and in law, produced by the defendant.

Exception 21 is to the conclusion (R. Sp. M., p. 53) in the section entitled "3. Nuisance," that the conditions described as produced by the defendant amount to a public nuisance, which plaintiff, and the communities affected, should not be required to tolerate.

Exception 22 is to the conclusion (R. Sp. M., pp. 56-57) that even if strict proof is required from the plaintiff, the conditions produced upon plaintiff's beaches and in its waters by the garbage, are attributable to the defendant, and that the invasions of plaintiff's rights are of serious magnitude and threaten to continue for an indefinite period.

Exception 23 is to the conclusion (R. Sp. M., p. 59), in the section entitled, "6. Jurisdiction," that defendant continues to produce a public nuisance on plaintiff's beaches, as aforesaid, and that the plaintiff is entitled to relief in accordance with the prayer of the bill.

Exception 33 is to the failure of the Master to find defendant's proposed finding of fact 60, to the effect that defendant has not caused the injuries and damages charged against it by the plaintiff in its complaint, especially in regard to injury to property values and retardation of economic development of plaintiff's municipalities, nor has defendant caused plaintiff and its municipalities great expense for the removal of garbage.

Exception 41 is to the failure to make defendant's proposed conclusion of law 18, to the effect that plaintiff must prove its claims by clear and convincing evidence.

Exception 42 is to the failure to make defendant's proposed conclusion of law 19, to the effect that plaintiff has failed to prove its claims by clear and convincing evidence.

Exception 43 is to the failure to make defendant's conclusion of law 17, to the effect that defendant's acts have

not created a public nuisance, as charged by the plaintiff, especially in respect to the health, safety, and welfare of plaintiff and its citizens.

A. The Special Master erred in failing to find that the plaintiff must prove its case by clear and convincing evidence and in finding that even if such rule applied conditions on plaintiff's beaches and in its waters were due to defendant's acts.

Questions raised by exceptions, Nos. 22, 41, and 42, relating to the matter of strict proof, will receive attention first. The Special Master, quoting from *Georgia v. Tennessee Copper Co.*, 206 U. S., 230 (R. Sp. M., p. 54), did not seem to think that the strict proof rule was applicable in suits between a state and a municipal corporation of another state, but that even if it were the plaintiff had complied with it and defendant was liable (R. Sp. M., pp. 56-57). We submit that the defendant was entitled to explicit findings as requested and not to the qualified concession.

The situation in the last cited case is utterly remote from situation here. There the State was seeking to enjoin the acts of a *private corporation* which was endeavoring to maintain its profits rather than install devices which would protect the rights and property of the State of Georgia and its citizens from serious injury or destruction. Here, we have a great municipality—an agent of a sovereign state—engaged in a work of necessity for the preservation of the health of its citizens and sojourners (thousands of whom come daily from the State of New Jersey to participate in the advantages it offers). As such state agent performing governmental functions it is entitled, we submit, to invoke the rule of proof required of the planitiff in an action between sovereign states. That the City of New York is a mere agent of the

State for executing governmental powers and duties in the locality where it is situated was found by the Special Master (R. Sp. M., p. 55).

He also found that the defendant was "given the right and duty of performing a function that may be called governmental" (R. Sp. M., p. 56). This is in accord with most authorities.

> *Harris* v. *District of Columbia,* 256 U. S., 650;
> *Condict* v. *New Jersey,* 46 N. J. Law, 157;
> *Haley* v. *City of Boston,* 191 Mass., 291.

In the *Harris* case, *supra,* the plaintiff brought an action against the defendant for injuries caused by one of its employees while engaged in sprinkling the streets. It was held that common law principles applied in the District of Columbia and that (p. 652):

> "But nothing else appearing, we are of the opinion that, when sweeping the streets, a municipality is exercising its discretionary powers to protect public health and comfort and is not performing a special corporate or municipal duty to keep them in repair."

(This is an important case in view of the fact that the plaintiff herein is invoking common law principles to sustain a recovery.)

So far as the present action is concerned, the parties would seem to stand, therefore, in the same situation as if the State of New York were defendant and had been attacked for performing some act for the benefit of the health of its citizens and objected to by the State of New Jersey.

The rule in regard to the quality of proof required before an injunction will be ordered at the behest of one

State in an action against another is enunciated in the cases of:

Missouri v. *Illinois,* 200 U. S., 496;
New York v. *New Jersey,* 256 U. S., 296, 309;
North Dakota v. *Minnesota,* 263 U. S., 365, 374;
Connecticut v. *Massachusetts,* 282 U. S. (Adv. Op. 75 L. Ed. 297, 302).

It is said in the course of the opinion of this Court in the famous case of *Missouri* v. *Illinois, supra,* at page 521:

"But it does not follow that every matter which would warrant a resort to equity by one citizen against another in the same jurisdiction equally would warrant an interference by this court with the action of a State * * *.

Before this court ought to intervene the case should be of serious magnitude, clearly and fully proved, and the principle to be applied should be one which the court is prepared deliberately to maintain against all considerations on the other side."

This Court has even gone so far as to hold that in an action between individuals to abate an alleged nuisance (consisting of a bridge and its piers in a navigable river—the Mississippi) the same must appear beyond a reasonable doubt. It is so stated in headnote 16 to the case of

Mississippi and Missouri Railroad Co. v. *Ward,* 2 Black 485.

"Another rule is that the bridge must appear plainly to be a nuisance before it can be so decreed;

since a Court of Equity, proceeding by bill, like a Criminal Court trying an indictment, must give the benefit of all reasonable doubts to the defendant."

The authorities being as above cited we contend that the defendant should have had the strict proof rule applied to the plaintiff and that under it the latter was not entitled to the findings and conclusions to which we have taken exceptions 18-23, above mentioned, and some others to be mentioned.

(1) Weakness of the plaintiff's evidence in regard to the dropped bottles.

Generally speaking, the evidence of the plaintiff may be divided into two main categories:

1. (a) Returned postal cards deposited in bottles dropped in the garbage as it was dumped in the ocean.

(b) Oral testimony as to things seen, found, smelt, etc.

(c) Articles picked up on the beach and photographs of conditions.

(d) Official United States Government reports.

2. Other reports and letters containing opinions of a more or less expert character and oral hearsay.

While there were occasional objections to testimony which were only sometimes sustained, almost everything offered was received. Much of the oral testimony of plaintiff's witnesses as to conditions at the beaches consisted besides the observations of the witnesses, of "complaints" made to them by others.

Concerning evidence relating to the returned postal cards deposited in bottles dropped in the garbage as it was being dumped from the defendant's scows or immediately thereafter, defendant has excepted (exception 15) to so much of the Master's finding (page 26) as finds that about 25% of the self-addressed stamped postal cards deposited in sealed bottles dropped in garbage in the ocean immediately after dumping by New York City scows came back to the parties depositing same by mail from persons along the New Jersey and Long Island shores and from further north.

The testimony in respect to this matter came from plaintiff's witness Smack employed to make investigations (Pr. A. 20) who testified that he and companions had made 34 trips to the dumping grounds (Pr. A. 7).

On fourteen of these trips they got close to the scows that were dumping and Smack deposited on each of the fourteen occasions twelve self-addressed cards in bottles in the garbage that had just been dumped (Pr. A. 7). One of these cards dropped on July 2, 1929, postmarked as mailed September 18th, 1928 (evidently a typographical error for 1929), was received in evidence as Plaintiff's Exhibit 2. There was no further testimony offered in regard to this card as to who found it or where it was found, except that plaintiff's counsel produced it as one of a number alleged to have been received by the witness through the mails but all of those which the witness had with him at the time he was testifying happened to have come "from the people over in New York, or along Long Island Sound who got the garbage (Pr. A. 8).

The witness testified that he received from finders from various Long Island, New Jersey and New England beaches 61 cards by mail. How many from each locality and when received was not stated. Bottles dropped near the shore usually reach there some time (see testimony

as to postal from bottle deposited in the lower bay of New York found at Ocean Grove, New Jersey, and returned in 1926 to the Chief Engineer of the Board of Estimate and Apportionment of The City of New York—Pr. A. 87). Only two of these returned postal cards were offered or received in evidence. Why not more if Smack had them? Perhaps the reason is to be found in the character of the testimony of the witnesses who did testify as to finding the bottles and cards.

The witness testified, however, that he had a group which came from residents of New Jersey (S. M. 23, Pr. A. 8). Be that as it may, only two other cards alleged to have been dropped by Smack were offered in evidence. The first of these two was plaintiff's witness, Walter Roe, a painter from Monmouth Beach (Pr. A. 79). He testified that on the 4th or 5th of June, 1929, he picked up a bottle on Monmouth Beach with a card in it; that he did not mail the card to Smack, however, until the 10th of June (Pr. A. 80); that the stamped date on it was June 2 (date of deposit?), 1929 (Pr. A. 80); that garbage was all around on the beach where the bottle was picked up (Pr. A. 80).

On cross examination the witness testified that he was employed by the Central Railroad of New Jersey in the summertime and in the Quartermaster's Department of the Army at Fort Monmouth in the winter, firing the furnace (Pr. A. 81). The card (Pltf.'s Ex. 44) appears to have been postmarked June 12th, although the witness put his name and address to it on June 10th (Pr. A. 81). His explanation as to why he held the card so long after the date on which it was found (June 4th or 5th) is as follows (Pr. A. 81):

"Well, if I happened to have went away the day after and I couldn't get back—I was painting on the

railroad and I was off for a couple of days—three days.

I was away for three or four days between the time I found it and the time I filled it out and when I came back I filled it out."

The second witness who stated that he found a card in a bottle was named James Durkin, who lived at Northwest Asbury Park (Pr. A. 412). He was a handyman for a real estate man (Pr. A. 413). The bottle was found amidst the garbage on the beach, and the witness put the date when he found it on the card, which he thought was June 4th. It appears to have been the 7th of June, not the 4th, and it was mailed according to the date on June 12th, 1929 (Pr. A. 413).

The similarity in the stories of these two witnesses is striking. Each thought he found his bottle on June 4th, 1929. Yet each mailed his card to Smack on June 12th, 1929, according to the postmarks. Each kept his card a number of days before mailing it. Why these apparently unintelligent witnesses should have been interested in these bottles and picked them out from garbage on the beach was not brought out. Enough does appear, however, to make their testimony of weak credibility. Not only is the proof sought to be deduced from the alleged finding of these two cards rendered somewhat dubious but so is that in respect to the other 59 from miscellaneous sources *not* produced. Durkin's card was given Plaintiff's Exhibit No. 262.

(2) Weakness of the proof that garbage, the dumping of which from city scows was actually seen, ever reached plaintiff's shores.

Whether garbage which had been observed as having been dumped from the scows of The City of New York

reached the shore, the testimony was far from positive. There is not the slightest doubt, of course, that great quantities of garbage did come ashore at times. The question was whether it came from New York City scows. The most convincing testimony to throw a doubt on the contention that most of the garbage came to the plaintiff's beaches from defendant's scows was elecited from plaintiff's own witnesses and was to the effect that during the long period of more than 20 years (1896-1918) when defendant dumped no garbage at sea (except for a couple of months in 1906) garbage conditions on the New Jersey beaches were thoroughly bad. Seven witnesses so testified as follows:

B. Y. Patterson (Pr. A. 125). I live at Spring Lake. I was born there. I have lived there ever since. My business is real estate and insurance. I have always observed the garbage on the beach * * * (Pr. A. 126). I do not know what effect it has upon my business. We have always had it.

John W. Flock (Pr. A. 345). I have held the official position of Beach Commissioner between 1912 and 1920, Commissioner of Parks and Public Property (of Long Branch) * * *. During all that time that I was Commissioner, some form of refuse, or garbage, came in on our beach; more or less all the time, and sometimes worse than others. * * * These conditions prevailed there the entire time that I served as Commissioner of Parks and Public Places, I would say; not all the time as bad as others; sometimes a great deal worse. When the wind was northeast, why, we got lots of it * * * (Pr. A. 346). We employed those men to go to work on the beach in 1912, as I stated before, and that was their duty every morning, from that year and right up until the time I resigned from the Board of Commissioners.

Edward Combs (Pr. A. 358). I live in Manasquan. I am a laborer now in a cold storage; formerly I was a

fisherman. I fished for 35 years, up until 4 years ago. I did pound fishing. I have always seen plenty of garbage.

H. S. WARD (Pr. A. 414). I live at Point Pleasant Beach, New Jersey * * * (Pr. A. 417). But the garbage condition has been existing as long as I can remember. And I have been on the coast all my life.

D. HUBERT CHESTER (Pr. A. 434). I have been coming to Asbury Park for 25 years. I am an engineer * * *. Quite a number of years ago, some 20 years ago, I was living at Point Pleasant in the summer and we had a storm there that brought all kinds of garbage.

J. LYLE KINMOUTH (Pr. A. 440). I am the publisher of a newspaper, the Asbury Park Press. I have published the paper between 34 and 35 years. During all of that time, practically, I have been in Asbury Park. I have been Beach Commissioner of Asbury Park from 1903 to 1905, when they took over the property from Mr. Bradley * * * (Pr. A. 444). I am not familiar with pollution of the beaches prior to 1905. Since that time it has been going on.

FRANK J. BOCK (Pr. A. 496). I live in Newark, New Jersey. I am the post-master * * *. I own an apartment at Deal, directly on the ocean front. * * * I spend the summers at Deal. I have spent, oh, probably 40 years along the (Pr. A. 497) coast,—not at Deal all the time * * *. I am familiar with the garbage on the beach. My observations have covered practically from Avon up to Elberon. I have been familiar with that during the past 40 years. There has not been any improvement in conditions.

Taken in connection with testimony as to garbage and refuse coming from other sources than the defendant's scows—to which we shall refer later—we submit that the correctness of the Master's findings as to defendant's responsibility is not free from doubt. Such being the case

we submit that defendant was entitled to its proposed finding of fact 64 to the effect that from 1896 to 1918, except for a few months in 1903 (1906), no New York City garbage and only a part of its refuse was dumped at sea, yet during that period a large amount of garbage and refuse was washed up into the New Jersey waters and on its Atlantic shore-front beaches, and consequently that exception No. 67 is good and should be sustained.

Whether there was convincing testimony that any of the plaintiff's witnesses had actually followed garbage they had seen dumped from dumping ground to shore, we submit the following testimony. It came from Smack and some of the lobster fishermen.

Smack testified that (Pr. A. 15):

> "Most of the time we went out, we caught a wind from the south, which carried it in the direction of the Long Island shore."

Further on (Pr. A. 17) we find this testimony from Smack:

> "In a northeast wind the garbage flows ahead of that wind toward the shore.
>
> I have seen it go to the shore.
>
> I have seen it work to the north, for instance, ahead of the wind from the south, and the wind cut across it from the northeast, and definitely the garbage would change its course and drift ahead of that northeast wind toward the shore."

Again (Pr. A. 17) Smack testified as follows:

> "I have seen them (islands of garbage) float very definitely toward the shore repeatedly, and I have

seen them follow the definite trial to the point where they deposited some quantity at Sandy Hook, yes."

On cross examination Smack, in answer to a question as to how far and how long he trailed the garbage he saw dumped, testified in this evasive manner (Pr. A. 24):

> "I have trailed the garbage that I saw dumped on one of these dates in a definite line right to the beach. The point at which the dumping was done was approximately 20 miles southeast by east of the Scotland Light, and the beach was 4 miles, approximately from the light.
>
> We moved right along with a definite line of garbage to that point."

* * * * * * * * * *

> The period of time during which I stayed with and traced the course and direction of the garbage (Pr. A. 24) was "Approximately 4½ hours."

He also testified that at such time the wind was blowing slightly south of east at the rate of 30 miles an hour (Pr. A. 24); that the boat was moving under its own power at less than half speed (Pr. A. 24).

Lars Peterson, a lobster fisherman, testified that dumping took place 18 miles off shore and that the floating garbage moved with the tide and wind but "mostly it's the tide" (Pr. A. 50). He also testified (Pr. A. 51):

> "I am able to say that garbage that was dumped from the scows came right in on the beach at Monmouth Beach."

In regard to whether he ever made any test as to whether garbage he saw actually dumped drifted in shore,

he gave this illuminating evidence on cross examination and we take it from the stenographer's minutes as we are permitted to do under the stipulation (S. M., pp. 204-205; Pr. A. 52):

"Q. So that you never did drift with the garbage? A. Drift with the garbage, no.

Q. You never did? A. Never drift with the garbage, no, because we use power.

Q. And you were going to and from a place for the purpose of managing your pots? A. Yes.

Q. And you never did make any of these trips for the purpose of testing the course of the garbage? A. Yes, I did, many times.

Q. Who told you to test the course of the garbage? A. What?

Q. Who told you to test the course of the garbage? A. I didn't get that question.

Mr. Crowe, read it to him (question read). A. Nobody did.

Q. What was your reason then for testing the course taken by the garbage? A. I didn't test it."

Anton Holgarson, another lobster fisherman, testified on direct examination as follows (Pr. A. 53):

"I have seen the garbage drift on the surface of the sea.

It drifts with the tide. If there is no wind, the tide will take it wherever the tide runs. If the tide runs from the east, it will bring it right clean into the beach.

I have never followed the garbage into the shore itself, but I have run through it all the way into the beach."

Carl Holgarson, another lobster fisherman, testified on direct examination (Pr. A. 55, 56):

> "These garbage areas drift with the tide mostly, because I have drifted with it.
>
> I have drifted with this garbage to the shore. Sometimes to the shore and sometimes off shore, sometimes north and sometimes south.
>
> I have never followed drifts of this garbage all the way to the shore in coming home on the drift.
>
> At different times I have seen it closer a little bit, at different times farther south; sometimes a mile off, sometimes ten miles off."

It was the idea of this witness that 15 miles out at sea there was no regular tide; that it ran in one direction for two or three days. His lobster pots were out 18 to 20 miles and when he fished with gill nets he sometimes drifted for 12 hours and would travel at the most 7 miles (Pr. A. 57).

Gustave Holgarson was a fisherman. He testified (Pr. A. 82-83) on direct examination that he sailed back and forth fishing each day and had followed garbage into the shore. He did not testify that this was garbage he had seen dumped.

M. Hall was another fisherman who accompanied Smack (Pr. A. 117). On direct examination he testified in regard to following the garbage (Pr. A. 119):

> "I have followed the garbage in the ocean in toward the shore, sometimes for an hour—over an hour.
>
> I couldn't tell at what rate of speed I was going—about 7 miles."

Another lobster fisherman was August Popp. He testified (Pr. A. 350):

"I have never seen this material in the water all the way from the place where it was dumped into the shore."

In view of this testimony we submit that the Master erred (see Exception 14) in finding as a fact that (R. Sp. M., p. 26) some of the lobster fishermen have followed the floating garbage from the place where it was dumped by the defendant to where it went ashore.

The plaintiff also called Wilbur H. Conover, a "master of steam vessels" for 32 years, coast-wise pilot and captain of the Parker Runyon, the boat of the Board of Commerce and Navigation of the State of New Jersey in 1923 (Pr. A. 492). At Governor Silzer's request he followed the New York City garbage scows on one occasion to a point 15 miles south by east of Scotland Lightship and watched the tow through glasses go out five miles farther and dump (Pr. A. 492-493). During the war the witness was 16 months on the coast. He then gave this testimony (Pr. A. 493):

"I have encountered the garbage at sea; no great quantity of it, but different fields of it at times, in the very course of the coastal navigation.

I have never seen the garbage moving from the dumping grounds towards the shore. I have went through it, of course, between the dumping ground and the shore."

There were other lobstermen who testified to the effect that they had followed the garbage from the dumping ground to the shore, but these men could not identify the scows from which garbage was dumped. They simply assumed that it was New York City's garbage from the place it came or from the amount of it.

After defendant's witnesses had testified, plaintiff put Deputy Inspector Haas of the New York Harbor Supervisors Office on the stand. He had investigated the dumping of garbage at sea by The City of New York in February, March and April, 1929, making six trips to do so under orders to follow the drift for 24 hours if possible (Pr. A. 636). Buoys were placed at the time and point of dumping and after drifting two hours then another was set and then one every two hours thereafter (Pr. A. 636). On March 1st a tow of three scows dumped 8 miles southeast of Scotland Lightship. After 24 hours drifting the garbage was 9 miles off Long Beach, L. I., N. Y. (Pr. A. 637). The second trip was on March 19th. The dumping point was 8 miles southeast of the lightship or 12 miles from the New Jersey shore. After 12 hours the wind and sea was so high that the test had to be abandoned, the garbage dumped having traveled on a big sweep about 14 miles to the whistle buoy 3 miles from the Long Beach shore (Pr. A. 637). Another trip was taken on February 25-26, 1929. The dump was made at the 8-mile location. After 17 hours the test had to be abandoned as the wind at that time was blowing 35 miles an hour from the east and the garbage was headed for the New Jersey shore traveling at about a mile an hour and was about six miles therefrom (Pr. A. 637-638). On March 11th a trip was made which lasted 24 hours. The dumping took place at the 8-mile point and at the end of the 24-hour period the garbage was headed out to sea (Pr A. 638). On February 22nd a 24-hour test was made and the garbage had traveled 18 miles from the dumping point mostly to the eastward (Pr. A. 638). The last trip was made on April 4th, the dumping place being the 12-mile point. The garbage was followed for 24 hours and it drifted 8 or 10 miles, mostly northerly and easterly

(Pr. A. 638-639). The witness testified that there was only one occasion when there was "a possible chance of garbage reaching the New Jersey shore" and that was when the witness had left it 6 miles therefrom drifting in that direction with the wind behind it (Pr. A. 639).

So, here, we have an investigation made with considerable care by an impartial, intelligent witness in the employ of the United States Government and yet he could give no proof that as a result of his investigation New York City's garbage did reach New Jersey waters or shores.

At no time did the garbage travel more than a mile an hour even when a thirty-five mile an hour wind was blowing. If this witness is to be believed (and there is no reason why he should not be), it would have been simply impossible for the lobster men or Smack, who saw dumping take place around the 20-mile point, to have drifted with garbage to the beach in from seven to ten hours. While garbage may have occurred *at intervals* all the way to the beach, the lobster men *never drifted with what they saw dumped all the way to shore* and neither could Smack or others running at half speed or less, follow such garbage from the dumping point to the shore.

In view of the testimony of Inspector Haas we submit that the defendant was entitled to have the Master find (see Exception 24), as requested by defendant (Proposed finding of fact 46) that six different inspections made by an official of the office of the U. S. Supervisor of the Harbor of New York in February, March and April, 1929, of garbage dumpings by New York City scows at the 8 and 12 miles dumping points where the drift of garbage was followed for from 12 to 24 hours, each did not reveal a single occasion when the garbage reached any shore.

The finding on page 25 of the Master's report was incomplete and did not give a true picture of the investigation by Haas.

In addition to this, defendant's witnesses Gainard, Lawrence and Bergsten made trips to sea to follow garbage dumped by New York City scows and each of them testified that on none of the three occasions when they went out did the garbage reach any shore. They are all pilots and coastwise ship captains (Pr. A. 547, 581, 614). The first trip was on January 30, 1930, to the 12-mile dump. The wind was blowing 20 to 30 miles an hour from the east to northeast with a rough sea which beat up the material that floated until only about 10% was left, five hours after dumping. During that time the floating material had drifted about 10 miles outward and about 14 miles from land. It could not be identified after that and as it was snowing, the boat put back (Pr. A. 547-550, 581-582, 616-617). The second trip was made on February 1 and 2 to the 12-mile dump and the garbage was observed for 18 hours. At that time what was left had drifted about 2½ miles from the point of deposit (Pr. A. 550-551, 618). The third trip was on February 29 to the 8-mile dump. This garbage was followed for 17 hours when only about 5 to 10% was left floating headed in an easterly direction (Pr. A. 551-552, 582-583).

(3) The plaintiff's proof was weakened by the absence of expert evidence to counteract testimony as to the influence of the tides in retarding garbage dumped ten to twenty miles from the plaintiff's beaches from reaching the same.

We think that in a case like the present it was somewhat striking that there was no expert evidence whatever on the subject of the tides off the New Jersey coast

and the effect thereon of garbage dumped into the ocean 10 to 22 miles from the shore. Assuming that high winds would overcome the effect of the tides if they blew in one direction long enough we have the specific evidence of plaintiff's lobstermen witnesses that the tide exerted a greater influence than the wind or at least at times when the wind was not blowing much.

Smack stated that everything that floats on the surface of the water is not affected in any appreciable degree by the tides when the wind is blowing hard (Pr. A. 25) and that the wind would affect the water to a depth of 18 feet (Pr. A. 25). Schweitzer, a lobster fisherman, testified that the tide seems to keep "the stuff" clear of the Highlands (Pr. A. 43). Lars Peterson, a lobster fisherman, testified that "mostly it is the tide that causes" the garbage to drift into shore (Pr. A. 50). And Anton Holgarson, a lobster fisherman, said, "If there is no wind, the tide will take it wherever the tide runs" (Pr. A. 53). Carl Holgarson, another lobster man, testified (Pr. A. 55): "These garbage areas drift with the tide mostly." C. A. Francis (Pr. A. 501), a resident of Long Branch for 57 years, a former State Senator, etc., testified (Pr. A. 503): "The tide brings it in." More such testimony might be found.

There is also evidence in the record to the effect that the garbage dumped by The City of New York had to cross two tides in order to reach the shores of New Jersey.

In a letter from J. C. Fremont, Supervisor of the Harbor of New York (to Governor Silzer), dated May 31, 1924, read into evidence by the plaintiff (Pr. A. 458-459) appears the following in respect to the furthest point at sea at which the scows can dump with safety (Pr. A. 459):

"This position is 20 miles east of the nearest point on the New Jersey coast, and any floating refuse to reach that point would have to cross at least two tides."

Plaintiff's Exhibit 257 is the report of a conference held September 19, 1923, of the Anti-Pollution League of America. Capt. P. M. Olmstead, Supervisor of New York Harbor at that time stated thereat:

"If the garbage comes back, there are two tides a day it must cross. It will take a passage of two days for that to float ashore. There is no place off New York where there is a two-knot tide not until you get into the Narrows. To cross sixteen miles it would have to cross two flood and two ebb tides to get into the beach. When wind is blowing on shore for 3 or 4 days, the surface current may run toward shore, and possibly some garbage does get in; that is a question which we have not decided yet"

In a letter from Governor Silzer of New Jersey to Secretary of War Weeks, dated June 19, 1923, read into the record verbatim, we find the following (Pr. A. 463):

"It is an admitted fact that if garbage is dumped far enough at sea, the outgoing tides will prevent it from being dumped ashore."

In view of this and to the facts to which we shall refer hereafter concerning the dumping of garbage by others than New York City scows much nearer the beach than its garbage was dumped, we submit that the defendant was entitled to proposed finding of fact 65, the master's re-

fusal to find which forms the subject of our Exception 34 to the effect that the plaintiff failed to produce on the trial of the action any scientific or expert evidence as to the effect of ocean currents or tides upon the movement of floating or partially submerged objects dumped into the sea 10 to 22 miles off the shore of New Jersey. Absence of such testimony certainly weakens any conclusion that the defendant is responsible for the conditions sometimes existing on plaintiff's beaches and in its waters.

III.

The Master erred in finding that compliance by the defendant in respect to the locality in which its garbage was dumped with permits issued by the Supervisor of the Harbor of New York under authority of the Act of Congress of June 25, 1888 (25 Stats., 209) as amended (Title 33, Chapter 9, Sections 441-451, U. S. Code), does not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

The pertinent sections of the statute are 441 and 443, U. S. Code, which have been set forth in full on pages 44 and 45 of the report of the Special Master and will not be repeated here or in the appendix of this brief relating to statutes.

Section 451 of the Code, nowever, in regard to the appointment of the supervisor might well be set forth herein.

"§451. **Supervisor of harbor; appointment and duties.** A line officer of the Navy shall be designated by the President of the United States as supervisor

of the harbor, to act under the direction of the Secretary of War in enforcing the foregoing provisions of this chapter, §§441 to 449, inc., and in detecting offenders against the same. This officer shall have personal charge and supervision under the Secretary of War, and shall direct the patrol boats and other means to detect and bring to punishment offenders against the provisions of said sections."

The Master found that defendant dumped its garbage at points 8, 10 and 20 miles outside of the Scotland Lightship and 10, 12½ and 22 miles from the shore of New Jersey in accordance with permits issued by said supervisor (R. Sp. M., pp. 20, 43, 46) but the Master also found that such fact constituted no defense to the defendant nor did it relieve the City from liability for the nuisance resulting from or created by its actions (R. Sp. M., p. 49). To this finding defendant has excepted (Defendant's Exception 49) as well as to a group of subsidiary findings and to the refusal of the Special Master to conclude as a matter of law (Exception 50) as requested by defendant that dumping by it under such circumstances amounts to a compliance with every requirement of Congress on the subject of navigation, commerce, etc.

The Master also charged the defendant with inconsistency in claiming the protection of the permits and yet asserting that the appointed places for dumping were not within the navigable waters of the United States (R. Sp. M., p. 57). We do not quite follow the Special Master here. We are not contending that Congress may not exercise jurisdiction over matters affecting American citizens beyond the 3-mile limit. It has done so in many ways in matters relating, for instance, to admiralty jurisdiction and in respect to the enforcement of the prohibition and revenue laws. (*Maul* v. *United States*, 274 U. S., 501, 511.) Apparently Congress has given

the supervisor certain discretion as to the exercise of his powers under 25 Stats., 209, as amended, beyond such limit. Waters "adjacent" to New York Harbor is an elastic term. Rather than enter into a controversy with the supervisor in regard to the place of dumping, defendant requested permits and abode by the supervisor's rulings in respect to place. Our position is that if the supervisor has any power or jurisdiction over the matter of our dumping, we comply with the statute and with his requirements, but that before we can be prevented from dumping at places beyond the 3-mile limit there must be further legislation if we do not violate the supervisor's requirements and the provisions of the Anti-Dumping statute.

IV.

The Master erred in finding that such garbage and refuse as reaches the plaintiff's shores from the dumpings by coastwise and other vessels and from other sources, is negligible in comparison with that dumped by defendant and reaching plaintiff's shores.

Under the heading in his report "Some Issues of Fact" (R. Sp. M., 30-36), the Special Master set forth some of the evidence on which defendant relied under its second defense, to the effect that in view of the dumping of a great deal of garbage and refuse by others nearer shore than that dumped by the defendant it could not be determined whether New York's garbage reached the pliantiff's shores. *But although the Master commented upon the fact that there was some evidence to support the defendant's contentions as to the other sources of pollution than defendant's scows, he failed to make any findings of fact in relation thereto.*

The Master's statement of the evidence as to the average number of coastwise vessels entering and clearing from New York City for points south is given on page 31 of the report. Most of the dumping is done from vessels leaving and these averaged about twenty a day. Why the Special Master recited that there was an estimate of a witness when there were the figures from the official reports also given on page 31 of the report, which bear out the "estimate" we do not know. On page 32 of the report the Master, after stating that some vessels which provide for their crews in port and do not dispose of their garbage and refuse there (as some do), finds that a majority of the lines operating out of New York southward did not accumulate garbage or other refuse matter, but make arrangements for its disposal while in port. The basis for this finding, if it be one, was the testimony for the plaintiff of William Park, Superintendent of the Clyde and Mallory Lines (Pr. A. 641). He testified (Pr. A. 642) that their line had three times as many sailings as any of the other lines, but that there were "a lot of freight ships" besides; that they did not feed their crews in port and (Pr. A. 643) that on their regular line they got in one day and sailed the next and that (Pr. A. 644) he had "not been on freighters very much."

The other witness for defendant on this subject was Harry P. Snow, Chief Officer of the Steamship "George Washington" (Pr. A. 645). He testified that his company (Eastern Steamship Lines), served meals to the crews while in port, which was 22 to 48 hours (Pr. A. 646) and the amount of garbage accumulated depended on the number of men in the crew. With ninety therein they accumulated 2 or 3 ten gallon cans which is dumped at sea below Shrewsbury Buoy, three miles off shore, and some of it is eaten by gulls. That he has sailed (Pr. A. 647)

through areas of garbage a couple of hundred feet in extent, which could come from vessels but did not, in his opinion, because it was all fruit skins which could not all come from steamships. In their refuse (Pr. A. 648) would be milk cans, sardine cans, ketchup bottles and mayonnaise bottles.

The witness also testified (Pr. A. 647-8) that he has seen in passing piles of "dunnage" (hold sweepings, refuse, etc.), piled on decks of foreign vessels for dumping at sea.

It is quite evident that both of these witnesses were testifying about passenger line conditions and not about freightships as were plaintiff's witnesses referred to by the Master on page 32 of his report. These witnesses had for many years been ship masters and coastal pilots. The first was Captain Gainard (Pr. A. 547). He testified as to the quantities and kinds of material dumped as hold, galley and crew quarters' sweepings, dunnage, wood, fruit, mattresses, pillows, shoes, old clothes, the remains of food left after meals, electric light bulbs, bottles, cans, etc., all dumped after passing the lightship (Pr. A. 554-555). He also testified that boxes, barrels and other containers with the names and addresses of New York City dealers thereon, when opened and the provisions constituting the ship's food stores removed, were put aside and later dumped with the other refuse (Pr. A. 556). In all of this he was corroborated by defendant's witness Capt. Lawrence (Pr. A. 584, 585). Defendant's witness Capt. Bergsten also gave somewhat similar testimony (Pr. A. 614-616).

Gainard also testified that ships held up by fog outside the harbor entrance, often for 24 to 48 hours, dumped garbage and refuse where anchored (Pr. A. 556). The annual report of the supervisor of the Harbor of New

York for 1929, introduced in evidence by the plaintiff as Exhibit 335, at page 2081 stated (Pr. A. 541-542):

> "It is probable that a great deal of garbage is dumped at or inside the harbor entrance by the enormous tonnage passing in and out of New York, and also that the local floating equipment throws more or less garbage overboard."

The same statement appeared in several other annual reports of the Harbor Supervisor prior to that of 1929, which plaintiff introduced in evidence. Governor Silzer of New Jersey, recognized this (Pr. A. 461), although he believed that it also came from New York. (Letter of June 24, 1924, from him to Harbor Supervisor Fremont.)

Harbor Supervisor Anderson testified that dumping permits were issued

> "to contracting companies that desire to dispose of what we call 'cellar dirt' which is debris from buildings that have been taken down. For example, when the Waldorf Astoria Hotel was torn down, the contractor deposited that material at sea under permit from my office" (Pr. A. 537).

This cellar dirt has in it according to Supervisor Anderson (Pr. A. 545), joists, timbers, laths and plaster of a very light kind.

Sewage was deposited in the waters of the Atlantic Ocean less than a quarter of a mile from the beaches of Long Branch and Asbury Park. This came from defective sewage disposal plants of those cities which was objected to by the New Jersey State Board of Health (Pr. A. 612-614, 619, 653, Deft.'s Exs. 9, 10—especially at pp. 16, 31-33—11 and 14).

All this is minimized by the Master on pages 34 and 35 of his report. For instance as to the pollution of the water adjacent to the beach at Long Branch by the defective sewer objected to by the State Department of Health, he states:

> "The evidence consists of a plan of the sewage system and some evidence that complaints were at one time made to the Department of Health which investigated the same; and that the matters were satisfactorily adjusted."

The facts are, as appears from Defendant's Exhibit 9, that the State Board of Health of New Jersey adopted three resolutions on September 14, 1926, the first of which directed the Long Branch Sewer Company to "cease to pollute the waters of the Atlantic Ocean being waters of this State, by allowing and permitting insufficiently treated sewage to be discharged from the sewer treatment plant of the said company, located in the City of Long Branch." The second and third resolutions approved plans and specifications of the company for improvements and extensions in the system and the installation of a new treatment plant which was to be finished and in operation June 15, 1927. Further facts about this sewer system are set forth in Defendant's Exhibit 10.

There is no testimony or documentary evidence whatever in the record as to the installation of these improvements or their approval by the State Board of Health. Counsel for the plaintiff promised to produce resolutions from that body showing the same but did not do so (Pr. A. 664-666). Defendant has excepted to the finding of fact in this matter above quoted (No. 82) and it should be allowed.

As to Asbury Park's defective sewers, is it fair to accept without hesitation defendant's rebuttal testimony

(R. Sp. M., p. 35) that conditions relating to the discharge of vegetable matter, fruit peelings and other objectionable objects from the outlet 1,000 feet off shore, discovered by defendant's witness Worthing in March, 1930 (Pr. A. 612-13) was due to the annual tank cleaning through opening of the blow off gates, in view of the fact that the State Department of Health has brought an action to restrain the City (Defendant's Exhibit 11) from discharging into the ocean inadequately treated sewage? Consequently we say that the uncontroverted evidence being such as it is we are entitled to findings instead of mere recitals of evidence and that our exceptions Nos. 52, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 68 and 69 should be granted.

The fundamental basis for the opinion and supporting testimony of many of plaintiff's witnesses to the effect that the garbage or most of it, found on plaintiff's beaches and in its adjacent waters came from deposits thereof in the ocean by defendant's scows, is the *amount* thereof and the New York addresses on letters, papers of various kinds, theatre ticket stubs, milk bottle tops, boxes, etc.

Frederick Bailey, coast guard at Avon since July, 1925 (Pr. A. 129), was typical of such witnesses. He testified (Pr. A. 131) that the garbage came from New York City because there was too much to come from passing vessels. "It is the quantity that is the basis of my judgment as to the origin of the garbage. That is my opinion."

There was other testimony to the same effect. Now whether the inference is good or not it remains that *it is an inference.* The same may be said concerning all of the papers, bottles, boxes, etc., with New York City addresses thereon. It is *inferred* that they are part of the garbage and refuse dumped from City scows because at one time or another these papers must have been in New York or originated there. Yet we find testimony from some of plaintiff's most intelligent witnesses that a

very large majority of the summer hotel population, of various seashore resorts, comes from New York City.

Harry Duffield, President of the Asbury Park Hotel Keepers Association and for 25 years previous to occupying that office Secretary of the Association (Pr. A. 421), testified (Pr. A. 422): "The patronage of Asbury Park hotels that comes from New York and Brooklyn amounts to 70%."

Sidney H. Rhodes, a merchant of New York with a summer home in Deal (Pr. A. 363), testified (Pr. A. 364): "Approximately 80% of the summer residents of our community are residents of New York—people who live in New York in other seasons of the year."

A great deal of similar testimony might be found. If inferences are to be indulged in, it surely is as fair to suppose that many of the check stubs, bill heads, letters, theatre checks, etc., were dropped by such summer residents on the beach as to suppose that they all come from New York City refuse deposits, to say nothing of materials dumped from passing steamships.

Then again there are the picnickers on the beach. Efforts have been made to control these people by ordinances and the placing of containers, etc., not altogether successfully.

Joseph Mayer, Mayor of Belmar (Pr. A. 254), testified as to picnicking on the beach (Pr. A. 260): "We have always been troubled with it. There is always somebody who will go down and start picnicking and that is the source of trouble."

Frank C. Borden, Jr., Mayor of Bradley Beach since 1919 (Pr. A. 174), testified (Pr. A. 177): "That on *August 1, 1929,* a tag system for residents was established to exclude outsiders. We have not room on our beachfront, even with a mile of frontage, to take care of our summer people—summer visitors and the day visitors who come for bathing and bring their lunches and so on;

we had no room for them so that we had to stop lunch parties on our beach."

Evidently up to the time of the commencement of this action lunch parties were pretty common on the beaches. It is, of course, more than a possibility that they were in the habit of leaving some of the kind of things on the beach that have been picked up therefrom with New York addresses on them.

Many communities employ men to clean the beaches daily and not only after storms and east winds under which conditions garbage usually reaches the shore.

M. E. Snyder, General Superintendent of the Ocean Grove Camp Meeting Association, a religious organization (Pr. A. 57), testified (Pr. A. 63): "We have men whose sole duty it is to clean the beach every morning, and they do it after the picnickers and the bathers."

Frank Durand, Mayor of Sea Girt (Pr. A. 164), testified (Pr. A. 165): "In our immediate bathing beach, where the beach would be used ordinarily every day, we require our life guards to clean the beach every morning." There is much other testimony to the same effect from plaintiff's witnesses as to the daily cleaning of beaches.

The testimony of Harbor Supervisor Anderson also must not be forgotten (Pr. A. 546) that paper and such like porus material has a tendency to become waterlogged and sink after an indefinite period of submersion. We say, therefore, that it is an inference that most of the refuse with New York addresses thereon picked up on plaintiff's beaches is water borne and that it is another inference that such refuse is dumped from the City scows. It is a well known rule of evidence that an inference may not be based upon an inference.

United States v. *Ross*, 92 U. S., 281, 283;
Mannig v. *Insurance Company*, 100 U. S., 693, 698;

Chicago, Mil. & St. P. Ry. v. *Coogan*, 271 U. S., 472, 477;

Lamb v. *Union Railway Co.*, 195 N. Y., 260, 266.

A chain is only as strong as its weakest link. If clear and convincing evidence that garbage and refuse in general, dumped by the defendant in the ocean did not reach New Jersey's waters and beaches, then the appearance of names and addresses on articles found will not supply the basic deficiency.

V.

The Master erred in his findings and conclusions that the defendant has delayed for an unreasonably long time in erecting incinerators to dispose of its garbage.

Such findings and conclusions are set forth under the sub-heading in the Master's Report "(17) Incinerators," especially on page 30, and also on page 23, last paragraph.

This last-mentioned finding states, in substance, that the first incinerating plant was erected by the City of New York in February, 1924; while on page 30 it is stated that it was in such year—five years after defendant began dumping at sea—that the first incinerator was put into operation, and that those subsequently constructed fall far short of taking care of the garbage and refuse situation; that the apparent delay in adopting the proper method of disposition is not explained and has been unreasonably long.

Exceptions Nos. 70, 71 and 72 have been taken to these

findings. Other exceptions to the Master's refusal to find and conclude, as requested by defendant in this connection, will be noted below.

Apparently the Master was under some misapprehension as to the different borough divisions into which the City of New York is divided by statute, although the appropriate sections of the Greater New York Charter were called to his attention. By Chapter 378 of the Laws of 1897 (Greater New York Charter), various localities were combined and consolidated under one city government, known as Greater New York, and subdivided into the Boroughs of Manhattan, Brooklyn, The Bronx, Queens and Richmond (See Appendix "A" of this brief). It was the first Borough of Manhattan incinerator (not City of New York) that was installed in February, 1924.

Edward P. Greene, Superintendent of Final Disposition in the old Department of Street Cleaning, and since December 1, 1929, in the Department of Sanitation, and connected with the work since 1894 (Pr. A. 564), gave uncontradicted evidence that (Pr. A. 572) neither the Boroughs of Queens nor Richmond had ever sent any of their garbage to sea, and that in the Borough of Queens there were now nine incinerators, while Dr. Schroeder, Commission of Sanitation, testified (Pr. A. 593) that there were three incinerators in Richmond. In other words, the garbage from these two boroughs has never been dumped at sea, but was incinerated.

The official records of the Department of Street Cleaning of The City of New York setting forth the monthly collections of the number of cubic yards of garbage from 1924 to 1929, inclusive, for the Boroughs of Manhattan, The Bronx and Brooklyn and the number of cubic yards dumped at sea from said boroughs, Defendant's Exhibit 12 (these being the only boroughs from which garbage was disposed of at sea during that period—with the per-

centages of the amount dumped to the amount collected) is as follows:

YEAR	AMOUNT COLLECTED (from 3 boroughs only)	AMOUNT DUMPED AT SEA	APPROXIMATE PERCENTAGE
1924	1,837,970	1,675,657	.91
1925	1,812,251	1,517,934	.83 2/10
1926	1,869,752	1,303,119	.69-6/10
1927	1,782,299	1,219,416	.68-4/10
1928	1,955,818	1,378,572	.70
1929	2,519,758	1,478,165	.58-7/10

Greene testified, also (Pr. A. 573), that of the garbage collected by the entire city, throughout all of its five boroughs, only about 27% was, by the end of 1929, being dumped at sea. (It is alleged in the complaint, paragraph "11", that the City's population increases at the rate of about 136,000 a year.) With none of the garbage collected from the three boroughs of Queens, Richmond and Brooklyn (since December 1, 1929), being dumped at sea, there is no reason whatever to doubt Greene's testimony—certainly in the absence of contradiction—as to the percentage of city garbage collected that is dumped. In other words, 73% is incinerated. Plans for the establishment of at least one incinerator on the Manhattan waterfront were enjoined by the New York Courts (Pr. A. 570; *McCarthy* v. *Mills*, 214 App. Div., (N. Y.), 70). Another site had to be abandoned on account of legal difficulties (Pr. A. 571).

We submit, taking all things into consideration, that the defendant is not chargeable with unreasonable delay in the erection of these expensive plants, costing around a million dollars apiece, excluding the value of the sites (Pr. A. 569). Instead, we allege that the Master committed error, as urged in the findings referred to in Exceptions 70-72 and in his failure and refusal to find the

facts and conclusions mentioned in Exceptions 40, 73, 74, 75, 76, 77, 78, and 79.

We further urge that the Master erred in his refusal to find and conclude as requested by defendant in Exceptions 84, 85, 86, 88 and 89. The matters referred to in those exceptions which we asked the Master to find, are set forth in New York Statutes (Appendix "A"), and why the Master should have declined to find and conclude as requested, we do not know.

VI.

The Master erred in finding that on all of the evidence, a case for equitable relief in favor of the plaintiff was made out.

The conclusion of the Master in this regard is found at the end of the Section of the brief entitled, "Some Questions of Law—6. Jurisdiction" (R. Sp. M., p. 59).

We once more set forth at this point a quotation from the case of *Missouri* v. *Illinois*, 200 U. S., 496, heretofore cited, where the application for an injunction to prevent the alleged pollution of the Mississippi River by the City of Chicago Drainage Canal was denied (p. 521):

> "Before this Court ought to intervene, the case should be of serious magnitude, clearly and fully proved, and the principle to be applied should be one which the Court is prepared deliberately to maintain against all considerations on the other side."

Now, while the recommendation of the Master is that the injunction to be allowed is not to take effect immediately, but only after a reasonable time for the erection of additional incinerators to be determined after

further hearings before a Special Master (R. Sp. M., pp. 59-60), the unforeseen difficulties which may easily arise through opposition by people of the neighborhoods adjacent to the sites of the proposed incinerators, or otherwise, after a time has been fixed by the Court for their construction, leads the defendant to oppose the confirmation of the report for that reason, among others.

A. Complete failure of proof by plaintiff as to loss of property or rental values in its seashore communities.

We ask if it has been proved that the damage and detriment to New Jersey and its shore communities is as great as the hotel-keepers, municipal officials, some of the summer residents, and fishermen, would have the Court believe.

It is true that the Master (R. Sp. M., p. 16) found that the garbage tends to injure business, and property values, and rental values; that it is dangerous to leave children unattended on the beach, and that people have cut their feet severely on broken bottles and nails in pieces of wood. We have heretofore urged that the proof was not clear and convincing, that these bottles and pieces of wood, and things picked up by children, came from garbage and refuse dumped from city scows. In addition, and especially in regard to the depreciation of values, we wish to call attention to the kind of evidence on which these findings are based. *Almost all of it is just ordinary opinion based on complaints and statements made to the witnesses.* It needs the citation of no authorities to substantiate the claim that such is not the method of proving depreciation of property or loss of rental value. Not a single witness testified that his property had remained vacant after prospective tenants refused to rent the same when they came to make inquiries on days when there was garbage on the beach. The course of sales or rentals in the communities was not given. The witnesses were not

qualified as real estate experts and their knowledge of values was not shown.

Below is a compilation of the statements of some of the witnesses for the plaintiff in regard to these matters. In setting it forth we do not wish to be understood as claiming that there are not stronger statements of opinion to be found in the record, to the effect that the garbage hurt the hotel business and property values and the rental of bath-houses, but we do say that such stronger statements are simply based on complaints and are not clear and convincing evidence.

James Hurry has been in the real estate business at Ocean Grove for fourteen years, and has seen garbage conditions once or twice a year. Complaints come in from his clients (Pr. A. 70):

> "It don't have any effect on my business . . . So far as interferring with the business is concerned, it doesn't interfere."

B. Y. Patterson (Pr. A. 125), lives at Spring Lake and was born there. His business is real estate and insurance. He testified (Pr. A. 126):

> "What effect it has on the development of our community, I have no way of telling. I don't know what effect it has upon my business. We have always had it. I don't know what effect it has 'til we get rid of it."

Arthur Kenneth Graham, Chemical Engineer, living at Seagirt and Philadelphia (Pr. A. 199):

> "As to the development of Seagirt, I know there are a great many people who come there who object to the fact that the garbage is there, and when it is very noticeable, almost everybody will remark about

it, and from that point of view I dare say there is a serious objection" (Pr. A. 200).

EDWARD L. MIX, Photographer, living in New York City in the Winter and at Belmar, N. J., in the Summer. One of his patrons who used to go to Belmar told him the conditions on the beach were so horrible that they would have to leave the place (Pr. A. 209):

> "Probably hundreds of thousands come to our beach in the summertime—last summer—and out of hundreds of thousands of people who went there, only one said they would not go back that I know of specially" (Pr. A. 210).

HORATIO CLAYTON, Spring Lake real estate agent and insurance man (Pr. A. 248):

> "It has a decidedly bad effect upon the development of the community" (Pr. A. 249).

JOSEPH MAYER, Mayor of Belmar (Pr. A. 254):

> "There is not any question that the question of garbage on the beach is a serious detriment to our town * * * but the principal effect seems to come from the complaints from the hotels" (Pr. A. 257).

The same witness testified:

> "So it became more serious each year. In other words, the towns were getting more people and greater numbers were coming to the beach and the resort, so that the garbage became more and more of a question of consideration with all officials and principally our own" (Pr. A. 256).

ANTHONY E. WICKHAM, Mayor of Seaside Park (Pr. A. 273):

"The effect that all of this has upon our community is a general depression of the property there, and holding the town back in general, by people keeping away from there" (Pr. A. 275).

"The assessed valuation of ratables in the borough is $2,600,000 this year. Last year it was $2,000,000 and about $400,000" (Pr. A. 274).

JAMES E. JONES, Mayor of Long Branch (Pr. A. 313):

"I do not think there is any question that the garbage on the beach is a retardation of development of theocean front property" (Pr. A. 313).

JOHN W. FLOCK, Funeral Director, Long Branch (Pr. A. 343):

"What effect the garbage has upon the development of our community is hard to say; what the community would have been if we had not had this garbage" (Pr. A. 344).

WALTER H. JARDEN lives at Philadelphia in the Winter and at Mantoloking in the Summer (Pr. A. 351):

"What effect it (garbage) has upon our community I do not know how to measure the effect upon the community. * * *. This garbage is a matter of common complaint in the neighborhood" (Pr. A. 352).

MRS. WALTER H. JARDEN, Wife of preceding witness:

"We bought in Mantoloking after one month's residence there, and did not realize the conditions, and if we had to do it again, I am quite sure we would go to south Jersey, where the beaches are clean and sanitary for children" (Pr. A. 353).

WILLIAM B. KIRSCH, Long Branch real estate man (Pr. A. 358):

"* * * I have had any number of people tell me if the condition was not removed they would go elsewhere" (Pr. A. 359).

JOHN J. KIERNAN, real estate man, living in Long Branch (Pr. A. 391):

"In the real estate business, it hurts us to this extent: when we look for renewals of leases for the coming year the people say, 'I guess we will have to cut it out this year, Mr. Kiernan, because we did not have much luck last year, and we had a few little accidents, and things like that" (Pr. A. 392-393).

J. WESLEY SEAMAN, Civil Engineer, Long Branch (Pr. A. 396):

"I do not know what effect this recurrence of garbage upon our beaches has upon our community, the beach development and growth. Of course, we do not have the visitors there that we should have, people go to other places" (Pr. A. 397).

H. S. Ward, Relator, Point Pleasant Beach (Pr. A. 414):

> "* * * One of my clients informed me that they would not be back next Summer, unless there was a remedy obtained along the beach that would make it possible for them to enjoy the water" (Pr. A. 415).

Thomas A. Mathis, State Senator from Ocean County (Pr. A. 475):

> "The garbage at times makes bathing almost impossible, and as bathing is one of the particular pastimes of our resorts, when the bathing is affected it affects the hotel business, the real estate business and all business in a general way" (Pr. A. 477).

Frank J. Bock, Postmaster, Newark, N. J., and owns an apartment at Deal, where he spends his summers (Pr. A. 496):

> "The garbage has a very detrimental effect upon shore development. I had an apartment at Deal, and I know this, that when people come to look at the apartments with a view of renting them, if they happen to strike the development during the course of an east wind, the impression is very bad, and sometimes people, while they may not say so directly, have referred to the unsightly and unsanitary condition of the beach, and it deters them from locating there" (Pr. A. 497).

In view of this testimony we say that the Master erred in refusing to find the defendant's proposed finding of fact 60, as set forth in Exception 33.

B. Counterbalancing evidence for defendant of the Summer popularity, growth of the communities and investments therein and increase in assessed values during the years while defendant is charged with fouling plaintiff's beaches and waters.

On the other hand there cannot be the slightest doubt but that there has been a very great *development of the seashore communities* in the past ten years. Here is some of the evidence on the subject from plaintiff's witnesses:

JOHN F. MURRAY (Pr. A. 107), Director of Public Works of Newark, N. J., with summer home at Belmar for past 10 years testified:

> "(Pr. A. 109). It (Belmar), has developed moderately, kept pace with the times down there. I wouldn't say that particularly within the last three years it has made greater strides than in any other period of time. I would say that the development has been gradual then, in some years."

FREDERICK N. REESCHEY (Pr. A. 126), a resident for 14 years of Bradley Beach and City Clerk:

> "(Pr. A. 128). We have a public bathing beach. Because of overcrowding conditions, during the past years particularly, it was necessary for the governing body to put into effect a tag system whereby they would accommodate the residents of Bradley Beach and their guests only."

C. ALVA BOND, JR. (Pr. A. 171), has lived at Sea Girt for 18 or 19 years past in the summer. He is in the real estate business and is City Clerk. Has lived there the year around since 1923:

> "(Pr. A. 173). I have been engaged in the real estate business in Sea Girt (599) since 1924; values

have risen rapidly during that period until 1926 and since then they have been rather dormant."

FRANK C. BORDEN, JR. (Pr. A. 174), Mayor of Bradley Beach since May, 1919, has lived there since April, 1914:

> "(Pr. A. 177). We have not room on our beach front, even with a mile frontage, to take care of our summer people—summer visitors and the day visitors who come for the bathing, and bring lunches, and so on; we had not room for them so that we had to stop lunch parties on our beach."

JOSEPH R. MEGILL (Pr. A. 178), lawyer living at Bradley Beach since September, 1916, and borough solicitor:

> "(Pr. A. 180). Our community has had a very rapid development within the past five years. Bradley Beach has grown quite some."

MRS. MARGARET D. PYLE (Pr. A. 279), has lived in Allenhurst for 25 years and had been borough clerk for the past six years:

> "(Pr. A. 280). For boardwalks and jetties we spent $275,000 on everything within the last four or five years."

And again:

> "(Pr. A. 282). I have been Borough Clerk for six years. I testified that the assessed value of property in our borough is now approximately $6,000,000. That is the valuation on which the state and county taxes are apportioned. I think the assessed valuation was around $3,000,000 when I first became Borough Clerk."

RALPH BORDEN (Pr. A. 418), lives at Point Pleasant Beach and has a United Cigar Store agency and general store:

"(Pr. A. 419). We have a settlement on the north end of Point Pleasant, near what is called the inlet section * * *. It was owned by the River and Ocean Front Land Company. I suppose they owned half a mile or so of beach front, and they gradually kept coming there building these small buildings until now I should say there is nearly 200."

JOHN G. GRUETZNER (Pr. A. 437), Beach Superintendent of the City of Asbury Park since 1918, but has been on the beaches for 25 years:

"The city has spent for jetties $1,516,400. This includes this contemplated new jetty at Fourth Avenue, which has already been authorized and is in course of construction. The city has spent for board walks $250,000; the valuation of boardwalks is at present $250,000; and we have an additional $210,000 appropriated right now to widen that boardwalk to the extent of 60 feet, to the ultimate width of 60 feet."

C. E. F. HETRICK (Pr. A. 377), Mayor of Asbury Park since January, 1915:

"The resident population of Asbury Park the last census was 1,500. Approximated now between 18,000 and 20,000."

Again at Pr. A. 381:

"In our program of development, however, I might say this, that our beach development, our park pro-

gress, our schools, and all that, also leads up to a secondary development, which is more or less of a private nature; but each year they take a part in promoting, that is, the hotel sections, which were asked in here (indicating on photograph) (1186), in the next 5 or 10 years, probably $25,000,000 or $35,000,000 in apartment hotels. That is all planned and being brought to a culmination."

ANTHONY WICKHAM (Pr. A. 273), living at Seaside Park for the last ten years and now Mayor of the borough:

"The winter population (Pr. A. 274), is about 500; the summer population is over 5,000. Our population is almost entirely a summer (878) population. The assessed valuation of ratables in the borough is $2,600,000 this year. Last year it was $2,000,000 and about $400,000."

FRANK DURAND (Pr. A. 164), Mayor of Sea Girt for the past four years, and living in Sea Girt since May, 1921:

"Pr. A. 168). I have been the Mayor of Sea Girt for four years * * *. During that time, as I understand the testimony of Mr. Roberts, the community has made quite rapid strides."

People flock to these resorts in summer for the day, week and month and especially over the week-ends. Many photographs introduced in evidence by the plaintiff show this and so do the train schedules (Pltf.'s Exs. 58-65). Yet, this is the period of the year when the

greatest dumping on the part of New York City occurs (Deft.'s Ex. 12). The findings of the Master set forth some of the great differences between winter and summer populations of the various communities (R. Sp. M., p. 11). Yet on page 12 of his report he cites some figures of the decline of railroad passenger traffic of people coming to Asbury Park on excursions from 1924 to 1929. It can hardly be that he sought to convey the impression that fewer people have been coming to Asbury Park in the last few years, for Edith W. McConnell, City Director of Information of Asbury Park (Pr. A. 429), testified (Pr. A. 431):

> "For the last three years, the excursions have been coming into Asbury Park in bus loads * * *. It is also a matter of common knowledge that the automobile has cut into railroad passenger very heavily for several years past.".

In view of all the above we ask this Court to overrule the Master's refusal to find defendants proposed findings of fact 61 and 62 to which refusals we have taken exceptions Nos. 80 and 81.

Cannot we find the real basis for this suit in the testimony of the witnesses from Asbury Park? Let us examine the evidence given by Mayor Hetrick for the plaintiff (Pr. A. 378):

> "For many years we have provided a city appropriation for direct advertising, which includes newspapers, magazines, and all the adjuncts of advertising. In addition to that, we provide a band; in addition to that, an orchestra. We have a baby parade, and functions of the type of a carnival. It

has all come under the advertising funds of the city, and the approximate amount in the last four or five years is probably $600,000. This year our direct advertising fund has been doubled, which is in addition to the other expenditures that will take place."

Asbury Park also maintains a publicity bureau (Pr. A. 389). T. F. Burley, Executive Secretary of the Asbury Park Chamber of Commerce, testified (Pr. A. 426) that the Chamber took care of municipal advertising, promotional activities relating to carnivals, conventions and baby parades. In reference to getting people to come to Asbury Park, he testified as follows (Pr. A. 426-427):

"We offer them as an inducement an immaculate beach.

You have had good descriptions of what we deliver. It finds me and the Asbury Park Chamber of Commerce in an embarrassing position."

Again we have this admission from the witness (Pr. A. 428):

"We spend money to get the people and after we get the people, we cannot produce the thing we had promised them to produce; clean, healthy, wholesome bathing."

Attention is called to Plaintiff's Exhibits 267-272, inclusive, being folders issued by the Publicity Bureau of Asbury Park substantiating the testimony of the witness concerning the claim made for wonderful beach conditions at Asbury Yark, which, according to the witness, *do not exist*. The testimony of this witness comes pretty close to an admission of dishonest advertising. No wonder the Chamber of Commerce is "embarrassed."

Mayor Hetrick testified (Pr. A. 384) that he had been engaged for some time in a campaign to get rid of this garbage. One does not have to be endowed with the wisdom of Solomon to see in all of these activities of the Anti-Pollution League, the legislators and governors of New Jersey and the officers of other coast municipalities, the deft hand and brain of Mayor Hetrick and the Asbury Park Chamber of Commerce.

We, therefore, urge that the Master erred in his refusal to conclude as a matter of law (proposed Conclusion of Law 21) that the plaintiff had failed to prove facts sufficient to constitute a cause of action in equity for the relief demanded in the complaint or for any relief (Defendant's Exception 91), and erred in failing to conclude as a matter of law (proposed Conclusion of Law 22) that the defendant was entitled to a dismissal of the complaint (Defendant's Exception 92).

We also urge that the Master erred in his recommendations for a decree and that Defendant's Exceptions 93 and 94 to such recommendations be sustained.

About twenty-five years ago this Court had before it the case of

California Reduction Company v. *Sanitary Works*, 199 U. S. 306.

That suit was brought to restrain the defendants from removing from the City or depositing at any other place than the plaintiff's works the garbage specified in an ordinance of the Board of Supervisors of San Francisco. The lower courts granted the relief requested and the order was affirmed by this Court. On page 320 the opinion states:

"Many of the questions involved in municipal sanitation have proved difficult of solution. There is no

mode of disposing of garbage and refuse matter, as found in cities of dense populations which is universally followed."

And again at page 321 of the opinion it is stated:

"These references to the different methods employed to dispose of garbage and refuse have been made in order to show that the board had before them a most difficult problem—unsolved by experience or science as to the best or most appropriate method of protecting the public health in the matter of the disposal of the garbage, refuse and other materials found on private premises, and in hotels, restaurants and like places. The State, charged with the duty of safeguarding the health of its people, committed the subject to the wisdom and discretion of the Board of Supervisors."

These observations may not be as true today as they were then, for doubtless progress has been made in the business of garbage disposal since the opinion was written but the problem as a problem is many times magnified in a city as large as New York in comparison with the San Francisco of those days and we ask the Court to take that fact into consideration. It may seem to the plaintiff that we have been slow in accomplishing the results aimed at judging from the standpoint of private business activities, but we are dealing here with a matter of governmental administration which, unfortunately, is never as fast moving as are the activities of ordinary commercial life. This also we ask the Court to consider.

CONCLUSION.

The findings and conclusions of the Special Master should be overruled; the proposed findings of fact and conclusions of law of the defendant approved; the recommendations of the Special Master for a decree should be disregarded and a decree should be entered dismissing the bill of complaint.

Respectfully submitted,

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ELLIOT S. BENEDICT,
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APPENDIX A.

Laws of New York (State and City).

Greater New York Charter (Laws of 1897, Chap. 378, as amended).

"SECTION 1. All the municipal and public corporations and parts of municipal and public corporations, including cities, villages, towns and schoool districts, but not including counties, within the following territory, to wit: The county of Kings, the county of Richmond, the city of Long Island City, the towns of Newtown, Flushing and Jamaica, and that part of the former town of Hempstead as it existed on the thirty-first day of December, eighteen hundred and ninety-seven, bounded on the east and north by the east and north bounds of the former village of Far Rockaway, and on the east by a line drawn due north from the northwest corner of said village to the south line of the town of Jamaica, as it existed on the thirty-first day of December, eighteen hundred and ninety-seven, are hereby annexed to, united and consolidated with the municipal corporation known as the mayor, aldermen and commonalty of the city of New York, to be hereafter called 'The City of New York;' and the boundaries, jurisdictions and powers of the said city of New York herein constituted, are for all purposes of local administration and government, hereby declared to be co-extensive with the territory above described; and the said city of New York is hereby declared to be the successor corporation in law and in fact of all the municipal and public corporations united and consolidated as aforesaid, with all their lawful rights and powers, and subject to all their lawful obligations, without diminution

or enlargement except as herein otherwise specifically provided."

"§2. The City of New York, as constituted by this act, is hereby divided into five boroughs to be designated respectively: Manhattan, The Bronx, Brooklyn, Queens and Richmond; the boundaries whereof shall be as follows:

First. The borough of Manhattan shall consist of all that portion of The City of New York, as hereby constituted, known as Manhattan Island, Nuttin or Governor's Island, Bedloe's Island, Bucking or Ellis Island, the Oyster Islands, and also Blackwell's Island, Randall's Island and Ward's Island in the East or Harlem Rivers.

Second. The borough of The Bronx shall consist of all that portion of The City of New York, as hereby constituted, lying northerly or easterly of the borough of Manhattan, between the Hudson river and the East river or Long Island sound, including the several islands belonging to the municipal corporation heretofore known as the mayor, aldermen and commonalty of the city of New York, not included in the borough of Manhattan.

Third. The borough of Brooklyn shall consist of that portion of The City of New York, as hereby constituted, hitherto known as the city of Brooklyn.

Fourth. The borough of Queens shall consist of the territory known as Queens county.

Fifth. The borough of Richmond shall consist of the territory known as Richmond county."

* * * * * * * * * * *

§96. There shall be the following administrative department in said city * * *:

Department of street cleaning * * *."

"§383. (As amended by Chap. 466 of the Laws of 1901.)

* * * * * * * * *

The presidents of the boroughs of Queens and Richmond shall, each for the borough of which he shall have been elected president, in addition to the powers above specified, have cognizance and control:

1. Of the sweeping and cleaning of the streets of the borough, and the removal or other disposition as often as the public health and the use of the streets may require, of ashes, street sweepings, garbage, and other light refuse and rubbish, and of the removal of snow and ice from leading thoroughfares and from such other streets as may be found practicable."

* * * * * * * * *

"§533. The head of the department of street cleaning shall be called the commissioner of street cleaning" * * *.

§534. The commissioner of street cleaning shall have cognizance and control:

1. Of the sweeping and cleaning, sprinkling, flushing or washing and sanding of the streets of the boroughs of Manhattan, the Bronx and Brooklyn, and of the removal or other disposition as often as the public health and the use of the streets may require, of ashes, street sweepings, garbage, and other light refuse and rubbish, and of the removal of snow and ice from leading thoroughfares and from such other streets within said boroughs as may be found practicable; and, as necessary, shall furnish scows or other suitable receptacles to remove or otherwise dispose

of, and shall remove or otherwise dispose of all ashes from the docks of Blackwell's and Randall's islands."

* * * * * * * * * *

"§605-a [as added by Local Law No. 13 of 1929 duly passed by the local legislative body of the City of New York (Deft.'s Ex. No. 5)]:

"*Department of sanitation.* In order to more effectively promote and protect the public health and safety by central and uniform administration of the governmental activities embraced within this chapter, the department of sanitation is hereby established, the head of which shall be a sanitary commission, with the jurisdiction, powers and duties prescribed by this chapter."

§605-b [as added by said Local Law No. 13 of 1929]:

"*Sanitary commission.* The sanitary commission shall consist of three members to be appointed by the mayor. One of such members shall be a licensed physician or a person holding the degree of doctor of public health, and one of such members shall be an engineer duly licensed under the laws of the state of New York with at least five years' practical experience in sanitary engineering."

* * * * * * * * * *

§605-d [as added by said Local Law No. 13 of 1929]:

"*Jurisdiction of sanitary commission.* On and after the date when this chapter takes effect, the sanitary commission shall have jurisdiction, charge and control:

2. Of the removal and disposition of ashes, street sweepings, garbage, refuse, rubbish and the bodies of animals;

4. Of the location, construction, operation, maintenance and use fo incinerators or other plants or equipment for the destruction or disposition of ashes, street sweepings, garbage, refuse, rubbish and dead animals".

City Home Rule Law (Laws of 1924, Chap. 363).

"§11. *Powers of cities to adopt and amend local laws.* 1. The local legislative body of a city shall have power to adopt and amend local laws in relation to the property, affairs or government of the city relating to the powers, duties, qualifications, number, mode of selection and removal, terms of office and compensation of all officers and employees of the city, the transaction of its business, the incurring of its obligations, the presentation, ascertainment and discharge of claims against it, the acquisition, care, management and use of its streets and property, the wages or salaries the hours of work or labor, and the protection, welfare and safety of persons employed by any contractor or subcontractor performing work, labor or services for it, the government and regulation of the conduct of its inhabitants and the protection of their property, safety and health."

United States Code, Title 33, Chapter 9 (relating to Oil Pollution Act).

"§433. *Prohibition against discharge of oil generally.* Except in case of emergency imperiling life or property, or unavoidable accident, collision, or

stranding, and except as otherwise permitted by regulations prescribed by the Secretary as hereinafter in this chapter, sections 434 to 437, inclusive, authorized, it shall be unlawful for any person to discharge, or suffer, or permit the discharge of oil by any method, means, or manner into or upon the coastal navigable waters of the United States from any vessel using oil as fuel for the generation of propulsion power, or any vessel carrying or having oil thereon in excess of that necessary for its lubricating requirements and such as may be required under the laws of the United States and the rules and regulations prescribed thereunder. The Secretary is authorized and empowered to prescribe regulations permitting the discharge of oil from vessels in such quantities, under such conditions, and at such times and places as in his opinion will not be deleterious to health or sea food, or a menace to navigation, or dangerous to persons or property engaged in commerce on such waters, and for the loading, handling, and unloading of oil." (June 7, 1924, c. 316 §3, 43 Stat. 605.)

APPENDIX B.

(Exceptions to Report of Master not specifically discussed in brief).

4. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 49) that The City of New York has not dumped garbage and refuse in the ocean for many years in any appreciable quantities within a marine league (three nautical miles) of the shores of the State of New Jersey, except on rare occasions either when necessary to preserve life where a scow was in danger of foundering or when there is some unauthorized action upon the part of the individuals employed by the contractors in charge of the scows or tow-boats.

The proof justified the finding (Deft.'s proposed finding of fact 49), especially in view of the Master's findings as to where dumping took place (R. Sp. M., p. 20). In view of statement in record by Counsel for N. J. that no complaint was being made against short dumping (Pr. A., p. xxiii) and Harbor Supervisor Anderson's testimony (Pr. A. 543, 630) the exception is justified.

5. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 50) that the territorial waters of the plaintiff do not extend more than one marine league or three nautical miles from the Atlantic Coast shore line of said State of New Jersey at low water mark.

The finding requested necessarily should follow from the Master's reasoning and conclusion (R. Sp. M., pp. 36-41), and therefore the exception is proper.

9. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 5) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Light Ship and from the New Jersey shore as stated in Exception No. 9, was not and is not a dumping thereof in the territorial waters of the State of New Jersey.

Same as last except this relates to a conclusion of law.

10. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 6) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Light Ship and from the New Jersey shore as stated in Exception No. 9, was a dumping thereof on and into the high seas.

Follows from last two exceptions.

12. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement, and the mass moves at times westward and northward or towards the shores of New Jersey or Long Island according to the direction and velocity of the wind.

The Master's finding omits to take into account the influence of the tide. This was erroneous in view of testimony of lobster fishermen referred to in brief. Exception therefore proper.

13. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that the mass spreads out on the surface of the water gradually breaking up into smaller areas and moving for indefinite periods with the wind, some of the materials being on the surface and some in suspension.

Exception proper for same reason as in connection with No. 12 above.

25. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 48) that when dumped, the lighter portion of the garbage floats while the heavier portion sinks, but that gradually some of that which at first floated, sinks, leaving a very considerably smaller portion floating at the end of 24 hours than at the time of dumping.

Proposed Finding of Fact 48 rests on testimony in the record (Pr. A. 17, 40, 50, 549-550, 552, 617, 639). It should have been found and the exception is proper.

26. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 52) that garbage and refuse dumped by the defendant into the ocean as aforesaid, has not found its way in any substantial quantities into the territorial waters or onto the beaches of the plaintiff.

This exception with 27, 28, 29, 30, 31 to the Master's refusals to find Proposed Findings of Fact, and 35, 36, 37, 38 and 39 to his refusals to make such conclusions of law as are therein set forth are based on the proposition generally that the plaintiff did not prove by clear and convincing evidence that defendant's garbage dumped far out at sea reached plaintiff's beaches in substantial amounts.

27. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 54) that the dumping of garbage and refuse at sea as aforesaid by defendant, has not caused substantial injury to the navigation of the ocean by the plaintiff or its citizens or visitors.

See notation under No. 26, *supra.*

28. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 55) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to bathing or bathing rights or property connected therewith on the part of the plaintiff or any of its citizens or visitors.

See notation under No. 26, *supra.*

29. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 56) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to fishing or

fishing rights or property used in connection therewith of plaintiff or its citizens or visitors.

See notation under No. 26, *supra*.

30. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 57) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not substantially injured or menaced and does not substantially injure or menace the health, safety, comfort or welfare of the State of New Jersey or any of its citizens or visitors thereto.

See notation under No. 26, *supra*.

31. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 58) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to the commerce of the plaintiff or its citizens.

See notation under No. 26, *supra*.

35. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 7) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not obstructed and does not obstruct or impede the navigation of the waters of the United States or of the State of New Jersey.

See notation under No. 26, *supra*.

Also hindrance to navigation of small motor boats of fishermen is unsubstantial, and permits to defendant from Harbor Supervisor took care of these complaints.

36. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 8) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not injured or destroyed and does not injure or destroy the bathing or fishing rights or property therein of the plaintiff or its citizens or visitors thereto.

See notation under No. 26, *supra.*

37. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 9) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not regulated or destroyed and does not regulate or destroy the commerce of the State of New Jersey and/or its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States or of any statute of the United States.

See notation under No. 26, *supra.*

38. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 10) that the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse, has not taken and does not take any property or right of

the plaintiff and/or its citizens, without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

See notation under No. 26, *supra*.

39. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 13) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not deprived and does not deprive the plaintiff and/or any of its citizens of the natural advantages of its or their position along the seashore contrary to the sovereign rights of said State as a member of the Union or of any of such rights.

See notation under No. 26, *supra*.

44. To so much of the Finding of Fact set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 45) as finds that the Act (29 Stat. 209, as amended) contemplated that the Supervisor prescribe certain limits, but there is no evidence in this case as to what limits were prescribed.

The limits were prescribed in the permits, some for dumping at the 8 mile point, some at the 12 mile point and some at the 20 mile point, southeast of Scotland Light Ship. Exception should therefore be sustained.

45. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 47) as finds, or purports to find,

that although the defendant dumps its garbage under permits issued by the Supervisor of the Harbor of New York at points in excess of one marine league from the shore of New Jersey, it is difficult to understand how that fact affords any defense in this case.

See arguement in Point III of brief.

48. To so much of the Finding of Fact or Conclusion of Law, or both, as set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 48) as concludes that the fact that the defendant is a municipal corporation does not afford immunity from the results of its own action.

If the defendant is performing a governmental function authorized by law, as here, it is not liable for its acts if the injuries inflicted are consequential *(Transportation Co.* v. *Chicago*, 99 U. S., 635, 640).

53. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Fact" (Report of Special Master, p. 35) as finds or concludes that testimony that some vessels discharge garbage and refuse after clearing from New York, falls short of establishing a custom by other vessels.

The evidence (as recited in the brief on this matter reviewed on pp. 70-72) shows that *all* vessels discharged garbage and refuse, only some discharge small amounts.

83. To so much of the Finding of Fact set forth in the report of the Special Master under the heading "Some Conclusions of Law," page 50, as finds that

some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents, and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area, and that the general practice continues, more materials being dumped in 1929 than in the preceding year.

In view of the statement of counsel for New Jersey that complaint concerning short dumping was not being made (Stipulation as to Record p. xxiii Printed Abstract) the Master's finding in this regard should not have been made. Furthermore, the amounts so dumped were unsubstantial.

16. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that the deposits of garbage and refuse produce unhealthful conditions interfering with and frequently preventing the comfort and enjoyable use of the beaches and sea, it being dangerous to leave children unattended on the beach while deposits are there because of things they may pick up, some of the same being unmentionable; that broken glass and nails in pieces of wood have been the cause of severe wounds to persons on the beach or in bathing, and that it is a menace to health and tends to injure business and property values and rental values.

17. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that during June, July and August, 1929, there were in Asbury Park, a considerable increase over the preceding year of cases of external otitis which is a swelling or inflamation of the ear canal, and of cases of infection of the middle ear requiring the drum to be opened, and of sinus affected cases resulting from bathing

in the ocean, and that one or more of the coast guard incurred a skin infection from the water which gave them considerable trouble.

As far as these exceptions relate to things affecting the health of persons using the beaches or waters of plaintiff, the findings of the Master are of unsubstantial matters. *One doctor* at Asbury Park found an increase of ear infections, 4 in 1928, 12 in 1929, and of another type, 1 in 1928, 12 in 1929; of sinus trouble, 8 in 1928, 11 in 1929 (Pr. A. 84-85), while a few life guards had a skin infection in one year. This evidence is of trifling character. The health physician of Spring Lake found no such conditions (Pr. A. 249).

54. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 36) as finds or purports to find that whatever garbage and refuse reaches the plaintiff's shores from coastwise and other vessels and other causes and other dumpings than those of the defendant are negligible in comparison with that constantly being dumped by the defendant and frequently carried by winds and waves from the dumping places to and upon plaintiff's shores as hereinbefore stated.

Reasons for this exception are found under Point IV of the brief.

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CHARLES ELMORE

IN THE

Supreme Court of the United States

No. 12 ORIGINAL—OCTOBER TERM, 1933.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

BRIEF FOR THE DEFENDANT FOLLOWING REPORT OF THE SPECIAL MASTER ON SECOND RE-REFERENCE.

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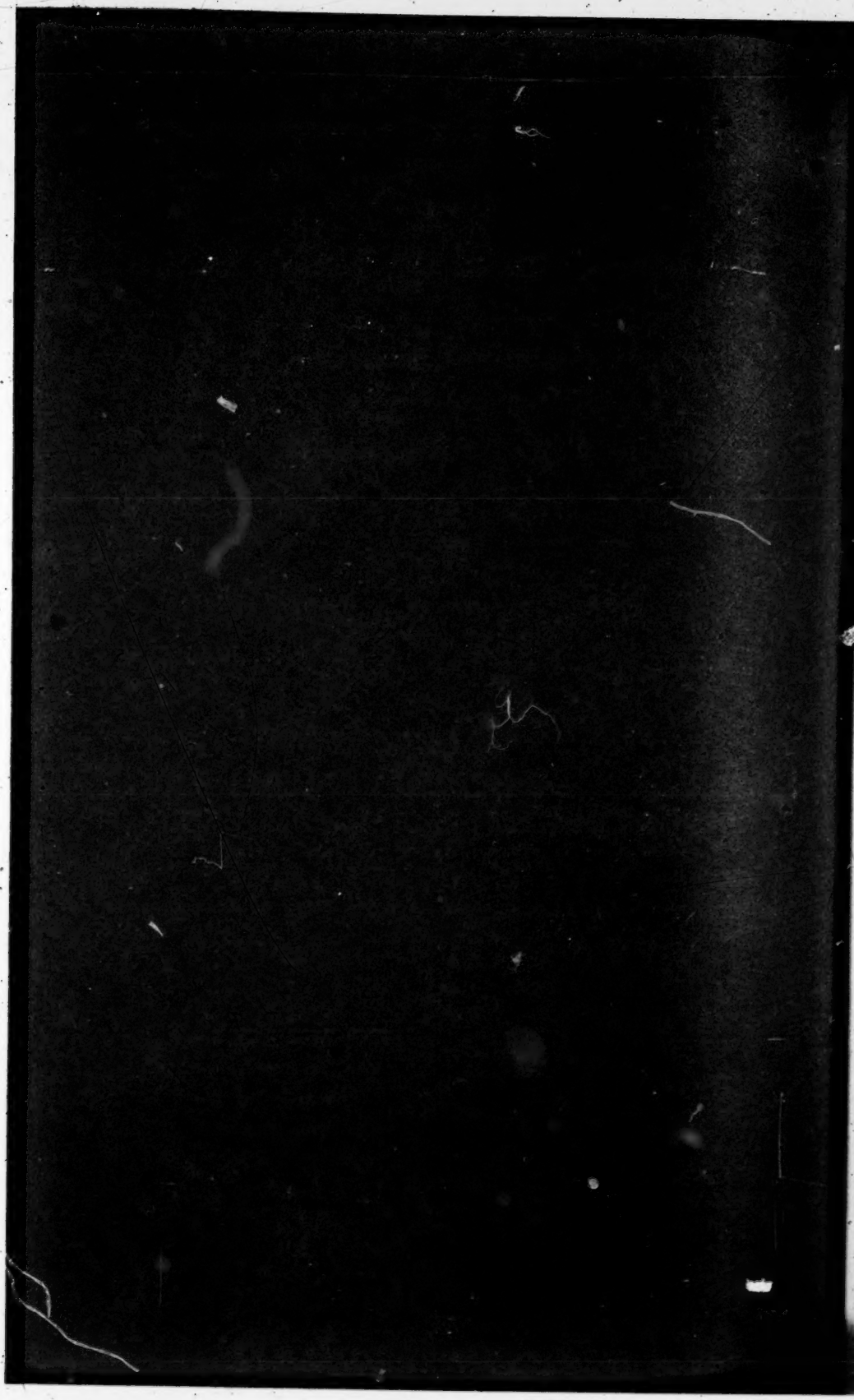

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STATE OF NEW JERSEY,
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BRIEF FOR THE DEFENDANT FOLLOWING REPORT OF THE SPECIAL MASTER ON SECOND RE-REFERENCE.

The Order of this Court dated May 29, 1933 (289 U. S. 712), directs that the hearing on the respective applications of the complainant and the defendant—the former praying that the defendant be adjudged in contempt for non-compliance with the decree of December 7, 1931; the latter praying for an extension of the time limited in said decree for sea-dumping from June 1, 1933 to April 1, 1934—shall be set down for November 6, 1933, and then further provides for the appointment of a Special Master to take the evidence that may be offered by the respective parties, and such as he may deem necessary, to show:

(1) What shall have been done by the defendant up to September 15, 1933, and the time reasonably required to enable it to comply with the decree; and

(2) The amounts that shall have been expended, subsequent to June 1, 1933, by New Jersey and its political subdivisions to prevent or lessen the defilement or pollution of its waters, shores and beaches and the damages respectively sustained by them as the result of defendant's failure to comply with the decree of December 7, 1931.

The aforementioned decree of December 7, 1931, or that part of it for which complainant prays that the defendant be adjudged in contempt, ordered that

"On and after June 1, 1933, the defendant * * * and all persons assuming to act under its authority, be and they are hereby enjoined from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the ocean or waters of the United States, off the coast of New Jersey, and from otherwise defiling or polluting said waters and the shores or beaches thereof * * *."

The cessation on and after June 1, 1933, of the dumping at sea of "any garbage or refuse" is the command of the Court. It will be noted at the outset that the decree contains no provision whatsoever directing the defendant to construct any prescribed number of incinerators. The cessation by defendant of the sea-dumping of garbage or refuse on June 1, 1933, would have given the complainant the maximum measure of relief which it sought in this action, and would have also constituted a full compliance by the defendant with the requirement of the decree in this

regard. (See comment of Special Master in this connection at page 160 of Minutes.)

The record on this second re-reference, dealing with that part of the order of reference dated May 29, 1933, which relates to

> "(1) What shall have been done by defendant up to September 15, 1933,"

goes back to February 13, 1931 (Minutes, page 9), when the mechanical engineer of the Sanitary Commission (now known as the Department of Sanitation) was directed to draft contract plans and specifications for four (4) destructor plants.

To this end there followed the request (March 24, 1931, Minutes, page 14) for and the grant of authority to the Sanitary Commission (May 19, 1931, Minutes, page 15) to engage the necessary engineers, draftsmen, equipment and supplies for the planning, designing and construction of four incinerators.

On May 27, 1931, the Sanitary Commission initiated the necessary steps to have the structures on the three incinerator sites then owned by the City cleared of the structures existing thereon at the time of the acquisition of such sites by the City; the site for the fourth incinerator being in process of acquisition by condemnation.

On September 1, 1931, the proposed contract plans and specifications for these incinerators were approved by the Sanitary Commission (Minutes, page 16), and on September 22, 1931, such contract plans and specifications were transmitted in triplicate to the Board of Estimate and Apportionment for approval of terms and conditions and authorization of funds (Minutes, pages 20-23), and on Sep-

tember 25, 1931, the matter of such approval was referred to the Committee of the Whole of the Board of Estimate and Apportionment of the City of New York. These proposed contracts specified the date for completion in each case as March 31, 1933 (Minutes, page 65).

Revised plans and specifications were submitted to the Board of Estimate and Apportionment by the Department of Sanitation on November 14, 1931, to meet criticism and suggestions made by the engineering staff of the Board of Estimate and Apportionment.

A necessary change in the Use District Map, Section 3, to be made by the Board of Estimate and Apportionment, was initiated by the Department of Sanitation (Minutes, page 46) so as to alter from a "Business" to an "Unrestricted" district part of the incinerator site located at West 215th and West 216th Streets not included within an "Unrestricted" district and this necessary change in the Use District Map was effected January 15, 1932 (Minutes, page 63).

By January 15, 1932, practically all the other necessary preliminary procedure required to be observed by Charter prescription in respect of all contracts before advertising for bids, such for instance, as the approval as to form, by the Corporation Counsel, of the proposed contract forms and specifications and the advertisement for and solicitation of competitive bids (G. N. Y. Charter, §419) thereon (Minutes, pages 61 and 62), had now been carried out. Authority to proceed with the solicitation of bids on the four incinerator contracts was all that remained to be had.

The record at pages 63 to 67 presents a very significant correspondence.

The financial crisis in the City's affairs commences to appear for the first time in connection with the four incinerator contracts. The Mayor requests the Chairman of the Sanitary Commission to submit a statement of how the funds necessary for these contracts would be required (Minutes, page 63). The letter from the Chairman of the Sanitary Commission dated January 19, 1932, in response to this request is set forth in *full* at pages 64 to 67 of the Minutes. In brief, the sum of $350,000 per month for ten months, plus $50,000 for personal service charges will be absolutely required under the proposed four contracts.

On June 17, 1932, the Board of Estimate and Apportionment approved the contracts and specifications for three (3) incinerators for advertisement on three different bases of performance—200 working days, 250 working days, and 300 working days, instead of completion by a specified date, such as March 31, 1933, as originally proposed (Minutes, page 91).

Advertisement for bids commenced July 13, 1932 (Minutes, page 96).

By August 10, 1932, 188 bids on the various alternate proposals and bases of performance were received from 8 bidders.

The analysis of these bids and the examination of the bidders as to their financial responsibility to execute the contracts for which they thus bid then proceeded during the summer of 1932.

On November 18, 1932, the Board of Estimate and Apportionment authorized the award of contracts for two incinerators (Minutes, page 123). The Contracts were executed by the successful bidder (Minutes, page 128) on November 23, 1932.

These contracts, in order to be a binding obligation on the City must, under Section 149 of the Charter, be "registered" by the Comptroller of the City of New York.

The requirement of "registration" of contracts awarded at public letting is set forth in said section as follows:

> "No contract hereafter made the expense of the execution of which is not * * * to be paid by assessment upon the property benefited, shall be binding or of any force, unless the Comptroller shall indorse thereon his certificate that there remains * * * a balance of the appropriation or fund applicable thereto, sufficient to pay the estimated expense of executing such contract as certified by the officer making the same * * *. It shall be the duty of the comptroller to make such indorsement * * * if there remains unapplied and unexpended such amount so specified by the officer making the contract and to thereafter hold such sum to pay the expense incurred until said contract shall be fully performed. And such indorsement shall be sufficient evidence of such appropriation or fund in any action * * *."

They were so registered by the Comptroller, after qualification of the respective sureties, on December 23, 1932 (Minutes, page 130).

Construction of the incinerators was commenced on March 21, 1933.

The contracts so awarded were for the construction of one incinerator at 215th and 216th Streets, 9th and 10th Avenues, Borough of Manhattan, for the sum of $696,395, and a second incinerator at Zerega Avenue, Lafayette Avenue and Hermany Avenue, The Bronx, at a contract price of $713,140, or an aggregate cost of $1,409,535. The contracts called for completion of the incinerators (exclusive

of heating and plumbing for which items, under the law of the State of New York, separate contracts must be awarded) in 200 consecutive working days. Each incinerator has a rated daily capacity for the destruction of 750 tons of garbage.

On October 2, 1933, the first incinerator (Manhattan) was 34% complete and the second incinerator (The Bronx) was 20% complete. (Testimony of Contractor, at page 610; of Commissioner Goodrich, page 559 of Minutes).

I.

The inability of the defendant to sell its corporate securities in the bond market has prevented the defendant from constructing the necessary incinerator facilities to enable defendant to discontinue disposal of garbage at sea by June 1, 1933, as required by the decree of this Court.

Municipal improvements, such as garbage incinerators, are and must be, financed through or by the issuance and sale of long-term corporate stock of the defendant.

Section 169 of the Greater New York Charter as amended [Chapter 466, Laws of 1901] provides for the issuance of such corporate stock for various specified municipal purposes.

This section expressly prohibits the City from expending any part of the proceeds of the sale of corporate stock or serial bonds for the purpose of

> "paying operating expenses of said city as hereinafter defined."

And the term "operating expenses" is then defined by said section in the following language:

> "The term 'operating expenses,' as used in this section, includes expenses for maintenance, repairs and current operation or administration of the property and government of the city; and excludes expenditures by the city for betterments, improvements and acquisitions of property of a permanent nature; but expenditures made or incurred by the board of water supply, the aqueduct board, and prior to January first, nineteen hundred and ten, by the department of docks, shall not be considered operating expenses within the meaning of this act."

Continuing, this section provides for the issuance of corporate stock for various specific capital purposes, such as hospitals and additions thereto, school buildings and sites therefor, and equipment for such new school buildings, the erection and equipment of buildings for the American Museum of Natural History and the Museum of Art which by Charter and contract with the City is an adjunct of the educational system of the City, and

> "for the erection and equipment when first erected of buildings *for garbage and rubbish disposal plants and dumps.*"

In brief, the financial scheme erected by the Legislature of the State of New York through the Charter of the fendant City, provides (1) for the financing of *capital or permanent improvements* by the issuance of its corporate stock or serial bonds; and (2) *"operating expenses"* which embraces charges for maintenance and administration "of the property and government of the city" by means of the annual tax levies.

The building of permanent public improvements, such as garbage incinerators out of budgetary appropriations, has never been done. "It is contrary to all the charter provisions that I know of" (McInnes, Minutes, pages 227-228).

March 1, 1931, was the date of the last sale of long-term corporate stock bonds which the City was, or has been, able to have (Minutes, page 219). This situation antedated the original decree of this Court in this action.

The issuance of special corporate stock notes (to be redeemed by long-term corporate stock) was restricted in January, 1932, by Chapter 4, New York Laws of 1932 (in effect January 22, 1932), to the sum of $200,000,000 and this limitation included previous corporate certificate or note issues of $76,700,000. The restriction, imposed upon the City by the State Legislature in January of 1932 (Chapter 4, Laws of 1932), against the issuance of corporate stock notes was a new regulation. Prior to that there had been no such restriction on the amount of corporate stock notes it might issue (McInnes, page 220).

Of the said $200,000,000 special corporate notes, $5,915,000 remain still to be sold. The bankers will not loan the City any more money (McInnes, Minutes, page 222).

There is still some money on hand left to pay maturing payments on account of the two incinerators under contract (McInnes, page 222).

At this point, it may not be amiss to clarify, again, some confusion which has arisen over the significance of what are termed "*authorizations.*"

The financial witness for the City does this at pages 218-219 of the record in the following language:

> "Q. In other words, an improvement having been authorized by the Board of Estimate, and the Board

> of Estimate having authorized the amount of money for it, that does not mean that the money is available at that time? A. No, it does not. The money is only available when the Comptroller is able to sell corporate stock notes, or to have a long term bond sale."

In other words, an "authorization" is a direction to *contract* or to *incur* municipal liability for a given project. Corporate stock is not sold until a payment on account of the project so authorized has matured or is about to mature. Sales occur when the need of the money to be obtained therefrom is imminent. This procedure is followed because it reduces or defers the accruing of interest on the corporate stock so sold until the actual utilization or application of the moneys to municipal liabilities which are to be defrayed therefrom.

While the City was unable to hold a long-term corporate stock sale after March 1, 1931, the financial crisis did not become acute until January, 1932, when limitation at the insistence of the bankers was placed upon the issuance of corporate stock certificates (Chap. 4, Laws of 1932 in effect January 22, 1932); and as hereinbefore pointed out [*ante*, page 9] the proceedings leading up to the award of the incinerator contracts had proceeded without any prejudicial delay until January 15, 1932, when the Mayor called for a statement of the amounts of money needed in 1932 for the carrying out of the four incinerator contracts then pending approval before the Board of Estimate and Apportionment (See Minutes, pages 63 *et seq.*).

The only cure for the situation confronting the defendant since March 1, 1931, and becoming more increasingly acute with the lapse of time since then, is an improvement in bond market conditions. The bankers have been unable

to float long-term loans for the City, so as to take up some, at least, of the outstanding corporate stock (short-term) certificates (McAneny, page 580).

Not a theory, but a condition—a dire condition—has confronted and still confronts the City in this matter.

That the City has also been seriously embarrassed by the non-payment of taxes by property owners for several years passed is evidenced by the fact testified to by the witness McInnes, at pages 223 and 224, showing the increasing sums necessary to be included in the annual budget to cover the item of uncollectible taxes—$4,750,000 in 1931 and $5,750,000 in 1932.

The insinuations of the complainant that the financial difficulty confronting the defendant in regard to incinerator construction is due to waste, extravagance or maladministration by the defendant's officers, is as unfounded as it is most ungracious. The Special Master did not conclude that either Mr. McInnes or Comptroller McAneny misrepresented the situation confronting the City since early in the year 1931, and there is no reason to believe that this Court would accept the complainant's insinuation.

II.

The complainant did not, upon the re-reference, furnish any legal proof of damage.

An extended examination and discussion of the evidence adduced on this phase of the inquiry will not be attempted.

It will be noted at the outset that the complainant itself sustained no damage. Of the twenty-nine municipalities involved in this proceeding, only nine made any claim of alleged damage. The aggregate amount of these claims is

determined by the Special Master to be the sum of $2,160.79. The astute Attorney General of New Jersey marvelled before the Master at "the extreme moderation" of these claims.

The so-called "extreme moderation" of these alleged claims of damage on the part of municipalities whose territory fronts upon the Atlantic shore of the State of New Jersey should not be suffered to obscure or conceal the inherent weakness of complainant's proof.

Legal damage may not be predicated on conjecture.

Complainant did not meet the requirements of the decree on this second reference merely by showing that it, of its political subdivisions, incurred expense in cleaning the respective beaches of materials cast thereon by the ocean. Complainant must prove, first, that the materials cleaned from the respective beaches of the several political subdivisions came from the scows dumped at sea by the defendant, and, secondly, the reasonable cost of the removal of such materials. It did not sustain this burden. Indeed, many of the complainant's municipalities which had claimed to be damaged by the defendant prior to the year 1933, sustained no damage whatsoever during the Summer of 1933.

The situation has materially changed since the decree originally entered in this suit. Prior to July 19, 1933, the summer dumping ground at which the defendant disposed of its garbage was located approximately twenty-five nautical miles off the nearest point of the Jersey coast. Since July 19, 1933, the defendant has been dumping its garbage at a point 35.8 nautical miles distant from the nearest point of the Jersey coast. It is significant in this connection, to point out that almost all of the witnesses who testified on the second re-reference, stated in substance that practically

no garbage had come on their beaches since the early part of the summer.

An examination of complainant's exhibit 501 (photographs of the various beaches) shows materials other than garbage, such as planks, timber, bottles and cans, to comprise the predominant bulk of such materials. That these materials, which strictly speaking constitute rubbish and not garbage, came from the scows dumped at sea by the defendant, the record is utterly barren of any proof.

Rubbish—namely, paper, cartons, crates and all varieties of things that do not constitute garbage—is and has always been separately collected from garbage and ashes. Rubbish so-called, is what is known for the purpose of incineration, as burnable material.

The successful operation of the incinerating plants requires the defendant City to be, as it has been, most alert in securing all of these burnable materials that it can, for fuel purposes in the destruction of garbage in its existing incinerators.

That the wood shown in plaintiff's exhibit 501, being mostly long boards and planks, could not come from the scows dumped at sea by the defendant is, we think, conclusively established by the testimony of the witnesses Goodrich, Green and Scocasa.

Concerning the item of bottles and glass shown in plaintiff's exhibit 501, defendant shows, in rebuttal, that for years past it has been able to award at public letting, a reclamation contract or privilege from which it derives a revenue of $756 a week, under which contract the contractor has the right to pick all salvagable materials from the sea-going scows; the testimony of the witness Scocasa shows that he employs a force of from fifteen to twenty men at

each waterfront dump for the purpose of picking from the garbage such salvagable materials; that among the materials so picked from the sea-going scows are all kinds of bottles and glass, including electric light bulbs and radio tubes. That the quantity of bottles and glass picked up at each one of the thirteen waterfront dumps averages from 50 to 60 barrels a week, and that the number of bottles contained in these barrels varies from 80 to 100 bottles, according to the size of the barrel.

As the result of an investigation undertaken by the defendant's Sanitation Department to determine whether or not it would be more profitable to the City to undertake the work of reclamation instead of awarding a contract at public letting for that privilege, the records of that Department show that the number of bottles reclaimed from the sea-going scows in the month of June, 1933, were 210,033; for the month of July, 227,620; for the month of August, 255,992, and for the first seven days of September, 129,735.

Concerning the item of cans, it is respectfully suggested that the claim of the plaintiff that open or uncovered cans shown in Complainant's Exhibit No. 501 could float from the scows of the defendant, a distance of 35.8 nautical miles, challenges credulity.

The presumption that all these materials shown in plaintiff's exhibit 501, must come, or could only come, from the scows dumped at sea by the defendant, cannot be indulged. The record in this action precludes such a presumption. The record shows that cargoes of condemned foodstuffs, such as onions, are dumped at sea. The record on this reference shows that in the months of June, July and August down to September 15th (Minutes, page 588) 4,459 vessels passed the Jersey coast within sighting dis-

tance, as shown by the records of the Coast Guard Station at Monmouth Beach, and that roughly half of this number were passenger vessels or ocean vessels (Minutes, page 600).

It thus appears that the complainant has failed to prove any legal damage against the defendant.

III.

The time reasonably required to enable the defendant to comply with the decree of this Court entered December 7, 1931, should be extended to July 1, 1934.

At the present time the only materials going to sea come from the Boroughs of Manhattan and The Bronx. Upon the completion and operation of the two incinerators now under construction—one located in the Borough of Manhattan, and the other located in the Borough of The Bronx, it will be possible for the defendant to dispose by incineration of all garbage except 250 tons per day.

The time when these two incinerators will be ready for operation is in dispute. The dates for their final completion and readiness for use as fixed by Sanitation Commissioner Goodrich is as follows:

(a) 215th Street (Manhattan Incinerator)—April 21, 1934,

(b) Zerega Avenue (Bronx Incinerator)—June 30, 1934.

The Contractor claims much earlier dates of completion as follows:

(a) 215th Street (Manhattan)—December 31, 1933,

(b) Zerega Avenue (Bronx) —February 5, 1934.

The dates of completion as testified to by the Contractor are not absolute, because the Contractor testified that these dates were subject to contingencies,

(1) Weather conditions when no work can be performed for which he made no allowance in his calculations of time of completion, and

(2) Limitation by way of reduction of the number of working hours per day resulting from the adoption of the proposed N. R. A. Construction Code now pending before the Federal authorities.

It is believed, in view of the present stage of construction of these two incinerators, Manhattan incinerator being thirty-four per cent (34%) completed and the Bronx incinerator twenty per cent (20%) completed, which is conceded to be correct by the complainant's witness, the Contractor, that the prospective dates of completion of these incinerators as testified to by Commissioner Goodrich will prove decidedly more dependable than the dates testified to by the Contractor.

The reason for this is obvious. Under the provisions of the contracts for the construction of these incinerators, the Contractor is subject to the payment of liquidated damages of $1,000 per day for any delay chargeable to him under each contract, and it is too much to expect of human nature that he would concede at this time, by his testimony in this proceeding, that he is liable to such penalties for a great number of days under each contract.

Upon the completion of the first incinerator in the month of April, 1934, the amount of garbage that the defendant will still be required to dispose of at sea will be reduced almost one-half, and with the disposition of this

reduced quantity of garbage at the thirty-five mile ground, the complainant will have no cause for grievance in view of the testimony of its witnesses on this second re-reference.

Upon the completion of the second incinerator, on or about June 30, 1934, the defendant will be able to discontinue the dumping of garbage at sea entirely by taking care of the small balance otherwise than by sea-dumping.

The findings of fact and conclusions of law which the defendant City believes are sustained by the evidence are appended hereto.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

THOMAS W. A. CROWE,
J. JOSEPH LILLY,
Of Counsel.

Defendant's Proposed Findings and Conclusions.

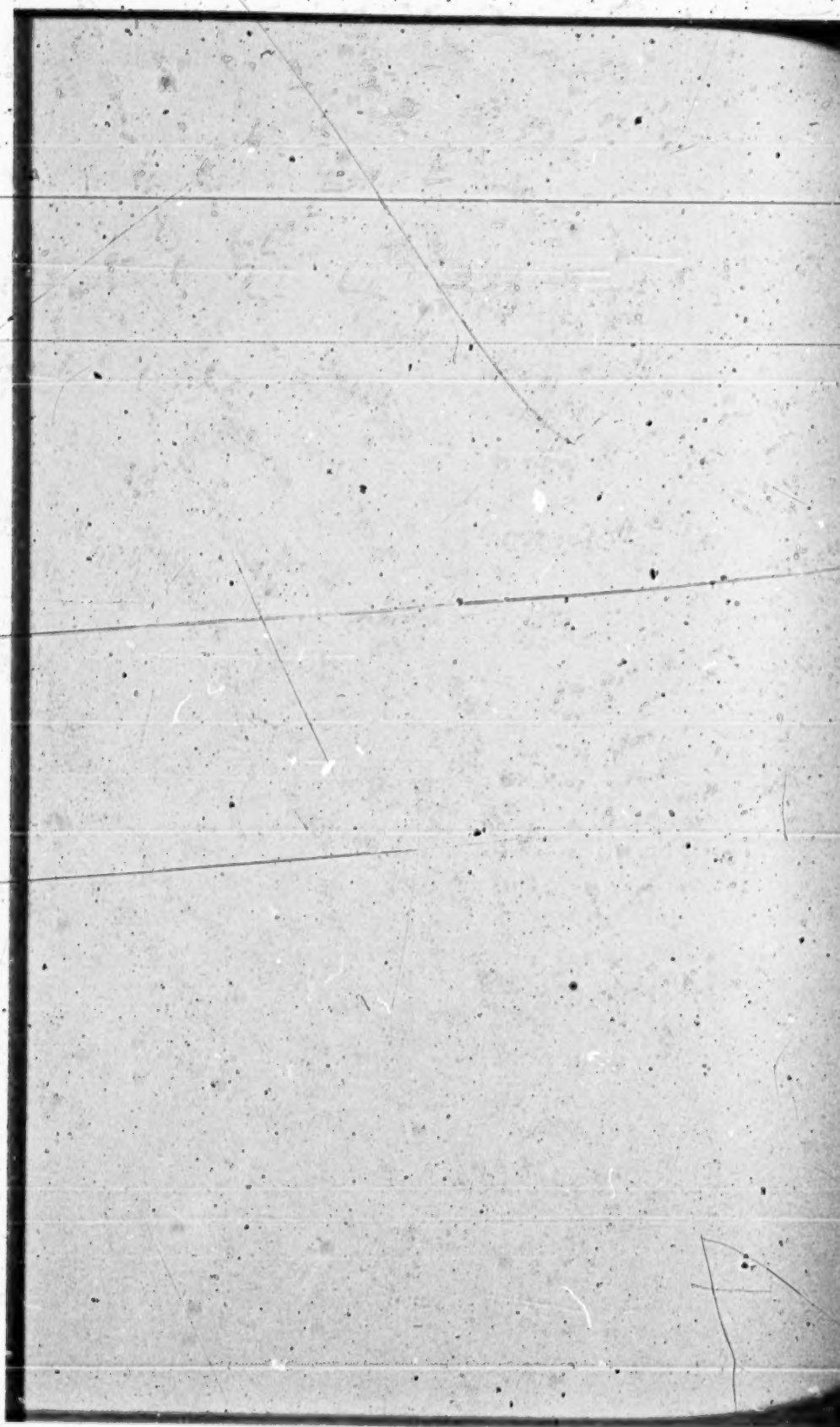
1. Considering statutory requirements defendant proceeded with due diligence in the performance of all preliminary work to enable it to comply with the decree, and in January, 1932, was progressing at a rate which would have enabled it to comply on or before June 1, 1933, the date fixed by the Court.

2. The delay commencing January 15, 1932, has been due entirely to unforeseen, unpredictable and insolvable problems, arising solely from the inability of defendant, City, to sell its corporate stock securities wherewith to secure moneys necessary to defray the expenses for the construction of incinerators.

3. Because the defendant has proceeded with due diligence, under all the circumstances, until prevented from making further progress by causes and conditions entirely beyond its control, the defendant has not been and is not in wilful contempt of this Court.

4. A reasonable time to permit the defendant, under all the circumstances, and particularly those arising since the entry of the decree in this case, to provide adequate facilities to permit it entirely to discontinue dumping at sea would be not earlier than June 30, 1934.

5. The complainant has failed to prove any legal damage properly chargeable against the defendant City.



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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 10 ORIGINAL.

STATE OF NEW JERSEY,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

BRIEF OF DEFENDANT IN REPLY TO PLAINTIFF'S BRIEF.

ARTHUR J. W. HILLY,
Corporation Counsel of the City of New York,
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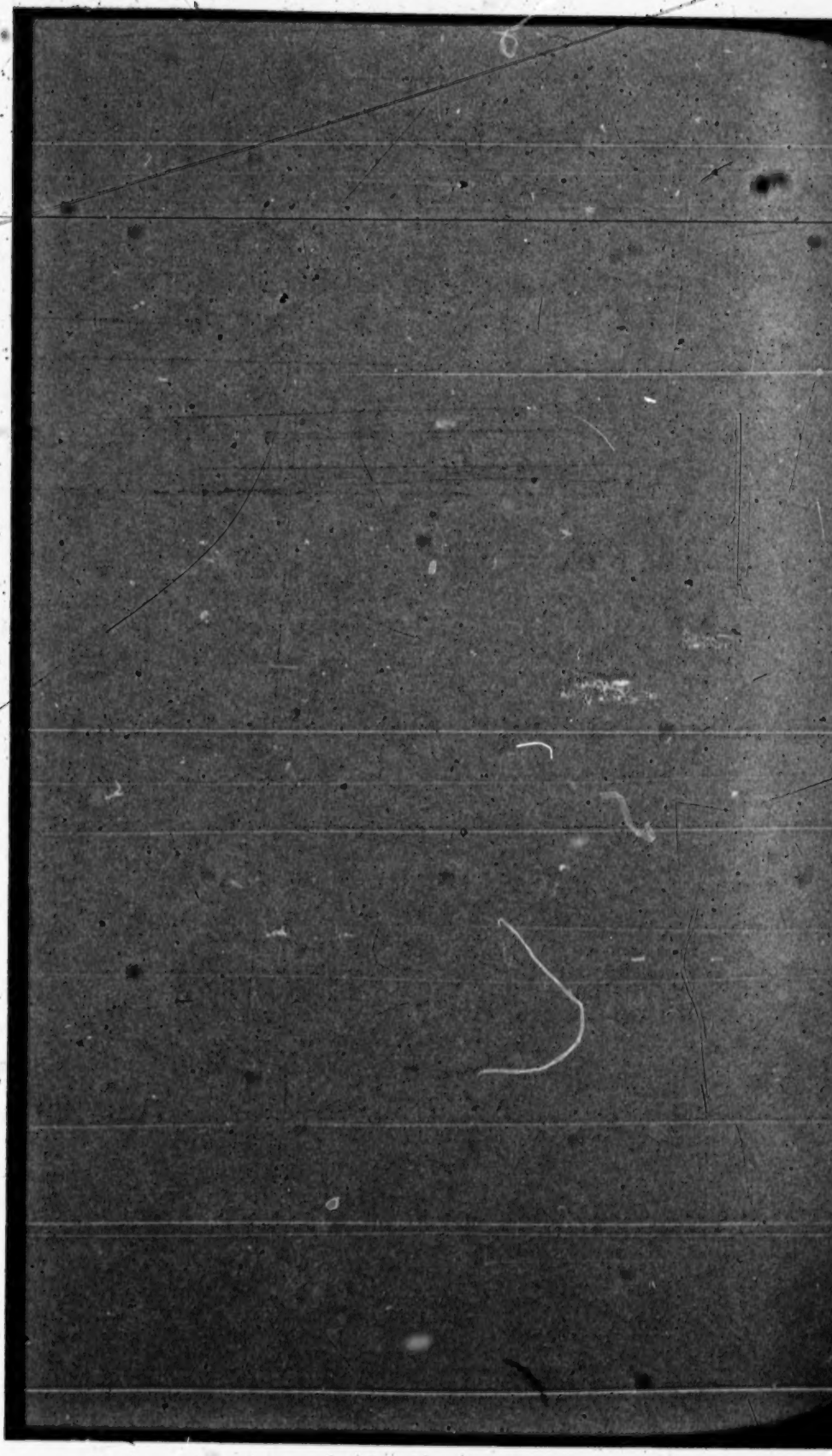

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 17, ORIGINAL.

STATE OF NEW JERSEY,
Plaintiff,
against
THE CITY OF NEW YORK,
Defendant.

BRIEF OF DEFENDANT IN REPLY TO PLAINTIFF'S BRIEF.

Statement.

Defendant's reply to plaintiff's brief in support of the report of the Special Master will follow the order of such brief, which in turn follows the order of defendant's exceptions to that report. Our points in this brief will, therefore, follow the group of headings or points of defendant's "argument".

(We are compelled, however, at the start to call attention and except to a statement in plaintiff's brief as to the claims of the defendant appearing in the first paragraph of page 2 of said brief. It is there stated—presumably referring to the amended answer—that it alleged "that this Court had no authority to enjoin such dumping because it was done on the 'high seas' ". *Defendant did not so contend.* The first defense in the amended answer alleged

that the garbage dumpings of the defendant were made in the Atlantic Ocean under permits from the Supervisor of New York Harbor, issued in accordance with the provisions of 25 Stats. 209, now Title 33, Chap. 9, Secs. 441, 443, 449, 451, U. S. Code, at points 8, 12 and 20 miles southeast of Scotland Lightship, and 10, 12½ and 22 miles distant from the shore of New Jersey, and that in view of such dumping on the high seas in the manner and at the points aforesaid this Court has no authority to enjoin defendant from dumping its garbage and refuse in the manner and at the places mentioned. The term "high seas" as is well known "includes waters on the sea coast without the boundaries of low water mark"—*In re Ross*, 140 U. S. 453, 471. It was, therefore, not because defendant's dumpings were made on the high seas solely, but because they were made in such seas more than a marine league from plaintiff's shores, that the jurisdiction of this Court was challenged in this case.)

ARGUMENT.

1.

Replying to plaintiff's argument that this Court has jurisdiction:

(a) Because the suit is one to protect the quasi-sovereign rights of the plaintiff:

Plaintiff introduced its contention by a quotation from *Kansas* vs. *Colorado*, 206 U. S. 46, at p. 85. Since plaintiff refers to that case as an authority favorable to it, we should like to quote from page 83 of the report the statement that:

> "* * * it (the judicial power) must be held to embrace all controversies of a justiciable nature

arising within the territorial limits of the Nation, no matter who may be parties thereto." (Italics those of the writer.)

A statement is then made in the brief (p. 5):

> "The principal issue raised by the pleadings is whether the acts complained of create a public nuisance on the lands and waters of the plaintiff."

Doubtless plaintiff would like to have the Court so consider the problems presented herein. However, a reading of our main brief should convince the Court that the above is a wholly incorrect interpretation of the issues or their importance. The principal issues are whether this Court has power to restrain defendant's acts in this case and whether, if it has such power, the plaintiff has proved the defendant guilty of causing the alleged nuisance.

Generally speaking, we do not argue that the plaintiff has not proprietary rights to the shore and in its territorial waters for a distance of three nautical miles from such shore; or that it has no right to sue in its character of *parens patriae,* if the proof of defendant's responsibility warrants it.

(b) Because the defendant is before the Court:

Plaintiff contends (p. 11) that because the defendant accepted the jurisdiction of the Court by not specifically raising the question in its original answer, and having thus accepted the same for more than a year "it cannot now raise the question". We will assume that anything said in a written argument in a case of the importance of the one at bar must be taken seriously even though its intrinsic importance may be doubted.

By way of reply, we say that in the first place, the Court allowed defendant to amend so as to specifically pre-

sent the question of jurisdiction over a strenuous similar objection by the plaintiff. In the second place, it is elemental that parties cannot confer jurisdiction by consent where questions pertaining to the subject matter of the controversy are involved.

> *State of Rhode Island* vs. *State of Massachusetts*, 12 Peters, 657, 720;
> *People* vs. *Central Railroad of New Jersey*, 42 N. Y., 283, 289 (Writ of Error dismissed 12 Wall. 455);
> *Ex parte, Schollenberger*, 96 U. S., 369, 377;
> *Ellenwood* vs. *Marietta Chair Co.*, 158 U. S., 105, 108.

Rhode Island vs. *Massachusetts, supra,* is such a landmark in the history of the power of this Court on the question of original jurisdiction in suits between states that we trust we will be pardoned if we quote from it at length.

This was an original suit in the Supreme Court brought by Rhode Island against Massachusetts to determine the boundary line between the two States at a certain point. The opinion of the Court was delivered by Mr. Justice Baldwin. In the course thereof it is said in respect to the powers and jurisdiction of this Court in reference to suits of this character (page 720):

> "But as this court is one of limited and special original jurisdiction, its action must be confined to the particular cases, controversies, and parties over which the constitution and laws have authorized it to act; any proceeding without the limits prescribed, is *coram non judice*, and its action a nullity; 10 Pet. 474; S. P. 4 Russ. 415. **And whether the want or excess power is objected by a party, or is apparent**

> **to the court, it must surcease its action, or proceed extrajudicially.** (Emphasis the writer's.) * * *
>
> Those States, in their highest sovereign capacity, in the convention of the people thereof; on whom, by the Revolution, the prerogative of the crown, and the transcendent power of parliament devolved, in a plenitude unimpaired by any act, and controllable by no authority, 6 Wheat. 651, 8 Wheat. 584, 88, adopted the constitution, by which they respectively made to the United States a grant of judicial power over controversies between two or more States. By the constitution, it was ordained that this judicial power, in cases where a State was a party, should be exercised by this court as one of original jurisdiction. The States waived their exemption from judicial power, 6 Wheat. 378, 80, as sovereigns by original and inherent right, by their own grant of its exercise over themselves in such cases, but which they would not grant to any inferior tribunal. By this grant, this court has acquired jurisdiction over the parties in this cause, by their own consent and delegated authority; as their agent for executing the judicial power of the United States in the case specified."

On the question of the original power of this Court to deal with suits such as the present, between a state and a citizen of another state, we submit that what is said above is applicable in the instant case. In other words, this Court has the jurisdiction which the States in their capacity as sovereign nations, in adopting the Constitution, had to give to it. If the original States in interpreting the powers of their courts under the common law had no power to restrain a nuisance committed outside their boundaries, they could not give any such power to this Court to adjudicate the rights of the parties to litigations involving such

questions. That they did not have such powers is discussed in the cases set forth in our main brief from pages 28 to 33.

On page 11 of plaintiff's brief, it is also said that the contention of the defendant that this Court has no jurisdiction because of the fact that garbage dumpings are made more than three miles from New Jersey's shores is inconsistent with its contention that it dumps its garbage under permits authorized by Act of Congress of June 29, 1888 (25 Stats. 209), and that they cannot be legally united by the defendant.

It seems to us that it is a sufficient reply to this argument to quote Rule XXX of the United States Supreme Court Equity Rules which states that:

> "The answer may state as many defenses, in the alternative, regardless of consistency, as the defendant deems essential to his defense."

Argument in this regard is also set forth at pages 68 and 69 of our main brief.

Whether permits are necessary to do such dumping as defendant does we do not know. Defendant has never taken the position that they were not. How far beyond the lines of New York Harbor, as laid down by the Secretary of the Treasury (*United States* v. *Newark Meadows Imp. Co.*, 173 Fed. 426, 428), the Supervisor's jurisdiction over dumping into the "adjacent waters" extends has never been established although it seems to have been held in one or more cases cited by the Special Master on pages 45-47 of his report that such jurisdiction extends beyond the three mile limit.

However, it does appear in this case that the Master did find that defendant had not violated the permits (unless

the finding on page 50 of his report that some garbage which remains on the scows after dumping is cleaned off as they "are being taken back from the dumping area" can be so interpreted. It is not so specified and we say it cannot be, in view of the finding on page 43 "that the dumping was by permission of the Supervisor of the Harbor".)

On page 12 of the brief plaintiff states that "Congress and the Supervisor of the Harbor have exercised", unchallenged by defendants since 1918, a sustained jurisdiction over the dumping grounds used "as navigable waters of the United States", and defendant cannot now challenge such jurisdiction, citing *Prigg* vs. *Pennsylvania,* 16 Peters, 539.

All this case holds on this subject is that an Act of Congress, which has been upheld by the decisions of various high State courts and by governmental officials, must after a long period of judicial and practical construction be considered valid (p. 621).

We ask, however, if plaintiff's contention is sound, why did not the Master make a specific finding to that effect as a matter of fact or law? Once again, we refer to *State of Rhode Island* vs. *State of Massachusetts, supra,* at page 729, where it is said, "that the boundaries of the United States were the external boundaries of the several states".

Plaintiff's argument really reinforces our own, namely, that the matter of dumping is within the regulation of Congress either under (possibly) 25 Stat. 209, as amended, or some provision yet to be enacted if thought necessary. Defendant has not been found to be violating 25 Stat. 209, as amended, and as yet there is no other appropriate legislation.

Other arguments on pages 12 and 13 of plaintiff's brief are sufficiently answered on pages 36-38 of our main brief,

except that we might add that in *Lefrois* vs. *County of Monroe,* 162 N. Y. 563, where it was held that the defendant could not be restrained at the suit of a neighboring farmer from permitting sewage to escape from its almshouse on to his farm, it was said that the alleged nuisance might be enjoined in an action against the Board of Supervisors of the County, and others in control of the building.

(c) The property affected is within the United States.

This subject is treated also at page 28 of our original brief (and *supra*), and nothing further need be added here.

2.

Replying to plaintiff's argument that defendant's garbage dumped more than a marine league from the New Jersey shore is driven by the winds upon plaintiff's beaches and into its adjacent waters, thus creating a public nuisance, to the great injury of plaintiff's rights and property.

On page 15 of its brief appear these statements:

> "The practice (of dumping its garbage and refuse at sea) was discontinued from that year (1896) until 1903 when it was resumed until 1906."

There are no references given as the source of this statement and no finding in accord therewith was made by the Master. Defendant's witness, Greene (Pr. A. 566-567), testified that the Barren Island Disposal Plant broke down in 1903 and for a short period of two or more months garbage had to be taken to sea. The abstract does make him state that "from 1906 to 1918 no garbage was sent to sea by

the City of New York". However, if the stenographer's minutes at page 1707 are consulted, it will be found that Greene's testimony was due to the form of question asked by City's counsel, as follows:

> "Q. So then from 1906 to 1918 was any garbage sent to sea by the City of New York? A. No, sir."

The Master, however, finds that the defendant "except for a brief period during 1906 did not dispose of these things at sea" (R. Sp. M., p. 19). It is immaterial whether the interruption was in 1903 or 1916. *But it is material that it did not extend for a three year period from 1903 to 1906, and nothing in the record justifies the statement in the brief.*

Taking up some of the statements in the brief in regard to the evidence, we find:

On page 27, it is stated that "Exhibits 16 to 24, both inclusive, show areas of garbage in mass and in process of distribution as it drifted toward the New Jersey shore (R. 15)." The words "New Jersey" do not appear in the printed abstract of testimony at the place referred to.

On page 28, it is said that:

> "Soap will not work on bathers who have been in that water (R. 16, 17)."

The printed abstract shows that these words should be preceded by the words "people remark". In other words, the statement is hearsay.

On page 29, it is stated that:

> "He (Smack) has followed the trail of garbage, which he has seen dumped in a definite line continuously to the beach, from approximately twenty miles southeast by east of Scotland Light."

and that he:

> "traced the course and direction for four and a half hours when the wind was blowing at the rate of thirty miles an hour (R. 24)."

In other words, if Smack followed this garbage in that way, it must have been moving about 4½ miles to 5¼ miles per hour (the Lightship being four miles from the shore—Pr. A., p. 24). Since the highest rate of drift of garbage as tested by Haas, plaintiff's witness, from the Harbor Supervisor's Office, was only slightly over a mile an hour with a 35 mile wind behind it, we submit that Smack's testimony, as well as that of the lobster men, on this subject was incredible and not to be interpreted as plaintiff and the Special Master have interpreted it. The correct construction is simply that they have gone through garbage all the way to the beach from the dumping grounds, but not that they have gone *along with* garbage that they saw dumped all the way to the beach (see also main brief, pp. 62 and 63).

From the bottom of page 32 to the middle of page 35 is a section of the brief relating to the testimony of fishermen, almost all of whom fished for lobsters. A majority of these men testified to having seen the scows dumped frequently, the reason therefor being because they often had their lobster pots set out near the dumping areas 18 to 20 miles off shore .(Voorhees, Pr. A., 36-37; Schweitzer, 42; De Camp, 47; Peterson, 50; C. Holgarson, 55; Oleson, 75; Popp, 347-348; Jacobson, 373). Now, although the Special Master made use of the testimony of these men as to following garbage from the dumping grounds to the shore (R. Sp. M., p. 26) he made no finding in respect to injury or damage to their lobster pots or to their business. Perhaps this was because one of them—Oleson—testified (Pr. A., 77):

> "I fished right around the dumping ground last year. That was the only place we could pick up a few lobsters * * *."

As it is a matter of common knowledge that lobsters are scavengers (Standard Dictionary "Lobsters"), the reason why the lobster-men fished on the dumping grounds is apparent. As to the damage they suffered, it often came from the dumping by scows of "heavy stuff" (cellar dirt, etc., Schweitzer, Pr. A., 46; Hines, 354; E. Phillips, 402). The testimony of this last witness should be examined with special care, as it is stated on page 33 of plaintiff's brief:

> "This garbage comes from New York City scows and is more or less a regular thing every day. This garbage affects lobster pots five or six miles inshore from the dumping ground (R. 402)."

Phillips actually testified in this regard (p. 402):

> "The way I put that distance is the inshore lightship there, [1239] the inshore lightship, which is supposed to be six miles from the beach. And I was directly south of him when he dumped on me. That is the subway dumping that I am talking about."

Surely it will not be contended that the dumping of subway material is the dumping of garbage, in view of the testimony of Anderson (Pr. A., 537) and Duggan (Pr. A., 546-547). We submit, therefore, that the summary is plaintiff's brief is misleading to say the least.

In view of the absence of a finding by the Master as to damage to lobster pots, we also submit that the statements on the bottom of page 33 and top of page 34, and middle of page 34, are out of place therein. The Master could not very well make a finding in regard to such damage in view of his finding (Report, p. 58) that, "The property affected is within the United States."

On page 34 it is stated:

> "Whenever the wind is from the east or northeast, it (garbage) drifts to the New Jersey shore. Their (lobster fishermen's) testimony positively identifies garbage on the beach and in the waters as having come from New York City scows dumped at sea."

There is no evidence in the record which justifies this conclusion of fact. If the word "toward" had been used instead of "to" in the sentence "it drifts to the New Jersey shore" it would not have been so objectionable. Several of the lobster fishermen witnesses so testified and two or three do testify that it drifted "to" the shore. In view of the testimony of Haas, however, heretofore referred to, we say that even such testimony cannot be relied upon (Main Brief, pp. 62-63).

As to the statements (Plaintiff's Brief, p. 34) in regard to diminishing returns to fishermen, we refer again to the testimony of Olsen above, and also to the fact that the pollution of coastal waters near important harbors by oil burning or oil carrying vessels and by refineries, has been a very serious menace to the fishing industry.

Plaintiff's Exhibit 258 is a transcript of the minutes of a meeting of the National Coast Anti-Pollution League, held in September, 1923. Set forth therein is a copy of a joint resolution adopted by Congress in the year 1922, authorizing the President to call a conference of marine nations with a view to the adoption of effective means for the prevention of the pollution of navigable waters by oil, etc., discharged from oil carrying or operated steamers. The preamble of such resolution, so set forth, contained the following provisions:

"WHEREAS, the careless casting of oil refuse into the sea from oil carrying steamers has become a serious menace to the maritime and fishing industries of the United States, and other countries, and * * *

WHEREAS, serious loss to ocean fisheries has resulted from such discharge into the territorial waters of waste products of oil used for fuel in many steamers in place of coal, which threatens to exterminate the food fish, oysters, clams, lobsters and other food supply, and

WHEREAS, the dumping of this oil refuse is not only ruining the bathing beaches situated in the territorial waters of the various countries which, during the summer, attract thousands and thousands of people to the seashore resorts, and the injury to seashore property is most alarming * * *"

The minutes of such meeting, as set forth in Exhibit 258, also show that several speakers at such conference emphasized the great injury which oil pollution was inflicting on bathing beaches and to bathers using them, and to the coastal fishing industry.

Evidently, as a result of the facts and representations made to Congress, that body, in 1924, passed an act, known as the "Oil Pollution Act" (43 Stat. 604), and set forth in Title 33, Chapter 9, Sections 431 to 437, inclusive, U. S. Code. The act prohibited the discharge, except under regulations prescribed by the Secretary of War, of oil, fuel oil, oil sludge, and oil refuse into or upon the coastal navigable waters of the United States, from vessels.

That the prohibitions provided by the statute were not wholly effective, however, is evidenced from the testimony of certain of the witnesses for the plaintiff in this case. Frank Durand, Mayor of Sea Girt (Pr. A. 164) testified

that there had been complaints from people there (Pr. A. 171) of oil and tar in the water which got on the feet of bathers but in the last two or three years it had not been serious. Edmund R. Willets, a summer resident of Sea Girt testified (Pr. A. 203) "I have seen oil come in on the beach at Sea Girt * * * more like tar than oil" (Pr. A. 204). Joseph C. Hoagland, a real estate man from New York who spends his summers at Rumson, New Jersey (Pr. A. 520) testified (Pr. A. 523) "we have had an oily deposit that we described, perhaps not technically correctly, as 'tar' on the beach. It is a crude oil deposit."

Perhaps, too, the dumping of Newark, N. J. sewer sludge at the 8 mile point southeast of Scotland Light has something to do with the alleged injury to fishing (Pr. A. 537, 545).

As to whether the garbage is getting worse every year (Plaintiff's Brief, pp. 34-36) although many of plaintiff's witnesses have so testified, others state that this is not so.

M. E. Snyder (Pr. A. 57) General Superintendent of the Ocean Grove Camp Meeting Association since April 1, 1925 testified for plaintiff:

> "(Pr. A. 60) This strewing of our beach with garbage occurred quite frequently in 1926. Each year since then it has been diminishing in quantity."

Gustave Holgarson (Pr. A. 82) fisherman for 48 years, living at Seabright, also testifying for plaintiff, said:

> "(Pr. A. 84) I have seen this stuff on the beach in Seabright. I cleaned a good many tons of it off (326). That is a good many years ago. I saw some garbage this summer on the beach, but the last three years there ain't been so much garbage on the beach in Seabright."

On page 42 of the Brief, about the middle of the page, we find this statement,

> "It (garbage) depreciates the value of property and interferes with the raising of municipal revenue (R. 505)."

One witness only, Walter J. Sweeney (Pr. A. 504), the borough tax assessor of Seabright, gave the testimony upon which this sweeping statement is based. His evidence is so lacking in substance as a support for such a conclusion that we take the liberty of quoting it (Pr. A. 505):

> "On two or three occasions, I went into the home of Mr. Reiker and Mr. Sisson, (1515) and they showed me where the litter and stuff was on the beach, and said they would not let their children go down there and bathe. And I promised them that the matter would be taken care of, and it would affect the amount of the taxes on their property. I took it before the Tax Board, and they said if I was satisfied to reduce the taxes on those places, it was satisfactory to them" (and this was done).

On pages 44 and 45 of the Brief are to be found statements in support of the contention that garbage and refuse on the beaches is a "menace to life and body".

With very few exceptions, all of the citations to pages of the record given as supporting these statements refer to hearsay testimony or conclusions of the witnesses from what had been told to them, and except for such testimony in reference to cut feet from broken bottles, the substance thereof is in respect to unimportant matters.

Toward the bottom of page 44, 12 citations to pages of the record are enumerated and in only one of these was the testimony given by an individual who actually cut

his foot. Four citations near the top of page 45 are given and all relate to the conclusions of witnesses or hearsay. In respect to the reference to the bather who had sued the City of Asbury Park for cutting his knee (R. 509), there is no proof whatever that he recovered a judgment.

The statement on page 45 that "some of the bottles in the garbage are labeled poison which shall have material in them", referring to R. 106-107, the testimony shows that *only one bottle* was referred to.

Shortly below this are six references to testimony in the record about bathers who avoid garbage and refuse in the waters because of the menace to health. These also refer to the conclusions of the witnesses.

On page 46, of the plaintiff's brief, there is a reference to typhoid fever having occurred in Red Bank (R. 331). The witness actually testified "that there has been typhoid in Red Bank, plenty. At different times surely—the average amount that would happen in any community."

We have commented in our main brief (Appendix "B" thereto, pages 110-111) upon the finding of the Master (R. Sp. M., p. 16) based on the testimony of Dr. Fischer (plaintiff's brief, page 47). In all of the 50 or more miles of beach front communities affected with their hundreds of thousands of summer residents and visitors and 160,000 of all the year around population, only one doctor could be found who could testify in relation to the increases in the various affections mentioned and he only compared the records of 1928 with 1929. The number of cases mentioned even in the year 1929 as compared with the permanent population is almost grotesque as a basis for a finding. Besides the failure to elicit any such evidence from the Health Physician of Spring Lake (Pr. A. 249), Health

Inspector Bostwick of Bradley Beach gave no testimony to support such finding (Pr. A. 198).

On the bottom of page 48 of plaintiff's brief it is stated that

> "Instances appear where guests stop coming to these resorts entirely because of their disgust with the garbage condition (R. 250)."

The testimony is "*I think* I have had people stop coming there on that account".

On page 49 of the brief we find it stated that the locations of the "dumping grounds are shown on plaintiff's Exhibit 205 (R. 294-5)." The distances marked on the exhibit are somewhat less than those testified to by Supervisor Anderson and his Assistant Haas (Pr. A. 537, 637) and the Special Master has made a finding (R. Sp. M., p. 20), to which plaintiff has not excepted, that the distances of the dumping points from the shore are in accordance with their testimony and not with that of Smack and his chart. Why then should the plaintiff have referred to the matter of the chart and Smack's testimony? Can it be that the brief was written before the Master made his report?

Near the bottom of page 49 of the brief we find it stated:

> "The fact that defendant's garbage reached plaintiff's shore was constantly called to its attention without denial, during the negotiations of Governors Silzer, Moore and Larson, * * *."

This is also somewhat inaccurate. In a letter dated May 23, 1923 from Commissioner Taylor of the New York Street Cleaning Department to Mr. John Gruetzner, Superintendent of the beach at Asbury Park, read into the record at pages 507-508, we find the following:

> "A study of the tides show that they travel at the rate of 2 miles an hour for the period of 6 hours, so that the distance that any material could approach the shore at Asbury Park would be 6 miles, and then it would be caught by the outgoing tide and carried out again * * *. It seems to me that unless an accident occurs to one of our scows from collision or otherwise, there is no chance of the garbage of the City of New York reaching the beaches."

A similar statement in substance is to be found in a later letter from Commissioner Taylor to Governor Silzer dated May 29, 1924, read into the record at pages 457-458. On page 50 of the brief this statement appears:

> "On the second occasion they put bottles overboard in the garbage to test the floating but did not gather them up 'because they were floating to the Jersey shore' (R. 557)."

We ask the Court if it is not apparent from this statement that the impression is sought to be created that the defendant's witnesses Gainard, Lawrence and Bergsten when making their test threw bottles overboard and then abandoned them because they were floating to the New Jersey shore? The actual testimony (to which we may refer under the stipulation set forth at page XXIII of the Printed Abstract) is as follows (S. M. 1674):

> "Q. And you went and gathered them up again, didn't you? A. We certainly did not.
>
> Q. Didn't you go and gather any of those bottles and cans up because they were floating to the Jersey shore? A. We certainly did not.
>
> Q. Now, you did not on any of those trips go and gather up the cans or bottles because they were floating towards New Jersey shore? A. We did not."

(This reminds one of the ancient illustration of unfair cross-examination "Have you stopped beating your wife? Answer, yes, or no.")

On page 52 of the brief we find this statement as to the defendant's garbage dumped at sea:

> "It retards the development and growth of the seashore communities; depreciates the value of real property; reduces and impairs the development of commercial enterprises; and retards the general prosperity; * * *."

As set forth under subdivision "A", Point VI (pp. 81-86), of our main brief, there is no clear and convincing proof to substantiate these important contentions of the plaintiff.

At the bottom of page 52 of the brief the last subdivision is "Public Nuisance Proven". We attacked the weakness of the plaintiff's proof in Point II of our main brief on pages 55-57. We cited the testimony of seven of plaintiff's witnesses who stated in substance that for many years prior to the time when defendant started to dump garbage at sea in 1918, conditions on the beaches had been bad. Here is the testimony of three more of such witnesses on the subject.

M. Hall, a fisherman and companion of Smack's on his investigating trips, testified (Pr. A. 117):

> "For the last 20 years, I guess I have seen more or less garbage."

Albert B. Carver, another lobster fisherman, testified (Pr. A. 213):

> "I have been in that business for 17 years. * * * (Pr. A. 214). That condition (garbage) has existed ever since I can remember."

E. Donald Sterner, State Senator, who has lived at Belmar all his life testified (Pr. A. 216):

> "I have encountered this garbage on the beach or elsewhere ever since my boyhood days."

In support of the last mentioned conclusion of the plaintiff are cited a number of authorities, among others the case of *Kuehn* vs. *Milwaukee*, 92 Wisc. 263, 18 L. R. A. 553, 554-6. The L. R. A. citation is not correct. That corresponds to a citation of the same case when it reached the highest court of Wisconsin four years earlier reported in 83 Wisc. 583 (53 No. W. 912). When the case came before the Court later in 92 Wisc. 263, it was also reported in 65 No. W. 1030.

We take the liberty of quoting therefrom as an addition to the list of cases set forth at page 49 of our main brief.

It holds that the City of Milwaukee, in disposing of its garbage through a contractor (who dumped it in Lake Michigan, 15 miles from shore thereby injuring the plaintiff's fishnets) was acting in a governmental capacity, the opinion also stating:

> "And it is not necessarily nor *prima facie*, an act of nuisance to cast the garbage of a city upon Lake Michigan, 15 miles from the shore. It has long been the almost universal custom everywhere to empty the sewage of cities into adjacent lakes and streams almost from necessity."

3.

Replying to plaintiff's arguments that compliance by the defendant with 29 Stats. 209 as amended, and permits issued thereunder by the Supervisor of the Harbor of New York, does not relieve defendant from the effect of the public nuisance created by its dumping.

We have little to add to what was said in Point III in our main brief and what has already been said on the subject herein.

The cases cited by the plaintiff on page 55 relate to nuisances erected or committed within State boundaries and much that is said in them is colored by that fact.

At page 56 it is stated that the validity of the permits issued by the Supervisor of the Harbor to the defendant cannot be determined from the record herein. In reply it is sufficient to state that they were regarded as valid by the Master (R. Sp. p. 43) [even although valueless as a defense] and plaintiff has not excepted to the finding.

Plaintiff contends (p. 56) that 30 Stats. 1152 (Section 13, Title 33, Section 407 of United States Code) applies outside the Harbor of New York and adjacent waters. No authority for this claim is cited and in reason it has no validity. If 25 Stats. 209, as amended, does not apply to defendant's acts certainly 30 Stats. 1152 does not. If one is not violated neither is the other. If a permit from the Harbor Supervisor is not good, one from the Secretary of War would not be valid either.

As a matter of fact, however, 30 Stats. 1152 was originally part of a general River and Harbor Act making

appropriations for works in rivers and harbors. 25 Stats. 209 was a special act covering for New York Harbor and adjacent waters the same subject as that covered for other harbors by 30 Stats. 1152. The Master so held (R. Sp. M., p. 46).

4.

Replying to plaintiff's arguments that such garbage and refuse as reaches the plaintiff's shores from dumpings by coastwise and other vessels and other sources is negligible in comparison with that dumped by defendant and reaching plaintiff's shores, and constitutes no defense to the plaintiff's complaint.

On page 58 of plaintiff's brief it is said that defendant's three witnesses Gainard, Lawrence and Bergsten testified to the "alleged accumulation of garbage" on the decks of vessels amounting "to 50 tons accumulated in ten to fifteen days in port occupying a space of 50 cu. ft. to the ton."

It is claimed that the testimony is incredible. The characterization that testimony related to accumulations "of garbage" is inaccurate and unfair. Gainard used the general word "materials" (Pr. A. 554) and then described them in detail (Pr. A. 555). He did not state that the accumulation was for a period of ten or fifteen days, but for a week or ten days (Pr. A. 555, 560), and that "When I said they accumulate garbage, now I am talking of accumulation in port, hold cleanings" (Pr. A. 560) * * * what was left of the cargo, the dirt, the dunnage the 50 tons consists of "garbage and rubbish" (Pr. A. 561). The others testified to much the same thing (Pr. A., 584-585, 624-625), although the amount was made smaller.

It really seems rather difficult for the plaintiff's brief-writer to characterize the testimony accurately. The testimony of defendant's witnesses in regard to the kind of material dumped from cargo boats was in a measure corroborated by plaintiff's rebuttal witness, Snow (Pr. A. 647-648), except that he had not seen garbage in dunnage accumulations.

Under the head of "Sewer Pollution" plaintiff discusses evidence relating to the Long Branch and Asbury Park Sewers. We have treated this subject on pages 72-74 of our main brief. We will only add that the criticism of the system of the Long Branch Sewer Company in the Engineers' Report (Defendant's Exhibit 10) is about as scathing as could be made.

The criticisms of the engineers appear on pages 16, 31 and 33 of their report. On page 16, it is stated

> "The efficiency of this plant is very low and unsatisfactory."

On page 31, it is said:

> "The treatment in the disposal plant is by screening only of a most primitive kind."

On page 32, we find the following:

> "Fly screen wire has been found elsewhere to be unsuitable for the screening of sewage. As might be expected, large solids are found in the effluent."

On page 33, it is stated:

> "The plant has been condemned by the State authorities and a new plant ordered, consisting of septic tank, chlorine disinfection, and pumps to raise the sewage to an elevation where it will be free from tidal interference."

On page 64 of the brief, plaintiff states that "defendant produced no evidence of any such dumping," i. e., by Brooklyn Navy Yard scows. Well, Harbor Supervisor Anderson testified (Pr. A. 540):

> "Scows of the Navy Yard in New York deposit materials on the high seas. They are required to go out to the garbage limit, although the proportion of the garbage in their loads is a small proportion. Theirs is generally a rubbish and refuse proposition."

Plaintiff's investigator, Smack (Pr. A. 9) said:

> "In trailing Woodson we passed a Navy vessel towing one empty garbage scow * * *."

It is true, defendant had no eye-witness or photographer to record the dumping by Navy Yard vessels. Doubtless, it is possible to infer that the empty garbage scow being towed by a Navy vessel was simply out for an airing, and that the testimony of Captain Anderson was, unlike the conclusions of dozens of plaintiff's witnesses, which were based on "complaints," of no value whatever.

The sea lane, or course, of coastwise vessels southbound from New York ranges from three miles offshore at Seabright, Long Branch and Asbury Park to five miles at Sea Girt and to eight miles off Barnegat Lighthouse (Pr. A. 553, 584). The Master seems to have so found, and that their routes lie between the dumping places of the City and the shore (R. Sp. M. p. 31). The dumping points for "cellar dirt" barges being at 4 miles southeast of the lightship must also have been nearer the shore than the City's dumping place. Hence the retarding influence of the tides would be less upon materials dumped from these

sources than they would be on materials dumped further offshore, since only one tide would operate against those dumped nearer inshore. They also have a shorter distance to go when drifting under the influence of an east wind. In other words, the likelihood of such garbage and refuse reaching New Jersey shores and waters would be much greater.

Our contention is, not as stated by plaintiff at page 64, that a similar nuisance created by passing ships or private contractors from Brooklyn Navy Yard excuses defendant and is a valid defense. We are aware of the doctrine that if A is *proved* to have committed a nuisance upon X's property, the fact that B, C and D contribute thereto does not relieve A. Our contention relates to the difficulty of *proving* that A (the defendant herein) actually committed a nuisance which affected plaintiff's property, in view of all the other sources from which the offending substances are more likely to have come, and which affected it for years when defendant was not dumping its garbage into the ocean.

5.

Replying to plaintiff's contentions in regard to some particular exceptions to the Master's report.

The only thing on which we wish to comment is the statement on page 66 of the brief relating to defendant's contention that the plaintiff must be held to strict proof, plaintiff remarking that the defendant has not the status or sovereignty of a State. We do not contend that the defendant has *all* of the sovereign powers or prerogatives of a State, but we have argued in support of our contention

that it has many of them (see pp. 48-50 of our Main Brief and cases cited therein).

To the cases cited in our Main Brief, we would add:

United States v. *Railroad Co.*, 17 Wallace, 322;
Commonwealth v. *Cutter*, 156 Mass., 52;
Higginson v. *Treasurer of Boston*, 212 Mass., 583.

In the headnote to *United States* v. *Railroad Co.* (*supra*), it is said:

> "A municipal corporation (City of Baltimore) is a portion of the sovereign power of the State, and is not subject to taxation by Congress upon its municipal revenue."

In *Higginson* v. *Treasurer of Boston* (*supra*), it is said, at page 585:

> "They (Cities and towns as territorial subdivisions of the State) have a two-fold character, one governmental, the other private. In the one they execute the functions and possess the attributes of sovereignty which have been delegated by the legislative department of the government * * *."

Other contentions of the plaintiff need not be specifically replied to here except that *costs* should not be awarded to the plaintiff, but to the defendant, on dismissal of the complaint as prayed for by defendant. Our views in regard to the remaining subjects argued by the plaintiff are sufficiently set forth in our main brief.

As an appendix to this brief, we have set forth a list of the exceptions to the Master's findings and page numbers where the reasons for taking the exceptions are discussed in our main brief.

Conclusion.

We renew our prayer for action by this Court set forth at the end of our main brief.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel of the City of New York,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
THOMAS W. A. CROWE,
of Counsel.

New York, April 27th, 1931.

Appendix.

List of Defendant's Exceptions and places in Main Brief where discussed.

Exceptions Nos.	Discussed in brief at pages	Exceptions Nos.	Discussed in brief at pages
1	24	27	105
1a	25	28	105
2	28	29	105-6
3	25	30	105-6
4	102	31	105-6
5	102	32	No specifie argument
6	(Error; found by Master)	33	46, 47, 86
7	25	34	67
8	25	35	105-6
9	103	36	105, 107
10	103	37	105, 107
11	25	38	105, 108
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13	103-4	40	79-80
14	61	41	46, 47
15	52	42	46, 47
16	110-11	43	46, 47
17	110-11	44	108
18	46	45	108-09
19	46	46	27, 36, 69
20	46	47	No specific argument
21	46-47	48	109
22	46-47	49	68
23	46-47	50	68
24	63	51	70-71
25	104	52	74
26	104-5	53	109

Exceptions Nos.	Discussed in brief at pages
54	111
55	74
56	74
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74	79-80
75	79-80
76	79-80
77	79-80
78	79-80
79	79-80
80	91
81	91
82	73
83	109-110
84	80
85	80
86	80
87	No specific argument; partly found by Master.
88	80
89	80
90	No specific argument.
91	93
92	93
93	93
94	93

FILE COPY

MAY 11

CHARLES ELMO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

NO. 10—ORIGINAL

10

STATE OF NEW JERSEY, Plaintiff,	In Equity.
Vs.	Application for Further Relief at the Foot of the Decree
CITY OF NEW YORK, Defendant.	

REPLY AND REPLY BRIEF

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 11, 1933

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

NO. 13—ORIGINAL

STATE OF NEW JERSEY, Plaintiff,	In Equity.
Vs.	Application for Further Relief at the Foot of the Decree
CITY OF NEW YORK, Defendant.	

REPLY

Plaintiff, in reply to defendant's answer and application for further relief, says:

1. It joins issue on said answer.
2. Said answer shows no defense to the petition.
3. Defendant is not entitled to the relief prayed in its application for further relief.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 11, 1933

PLAINTIFF'S BRIEF
IN SUPPORT OF THE FOREGOING REPLY

I

"He who seeks equity must do equity." By leaving until the eleventh hour; nay, the twelfth hour, the presentation of alleged reasons for failure to comply with the solemn decree of this court, which reasons, if true, were known to the defendant at all times during the past eighteen months, and waiting until prodded by the plaintiff's motion, is not doing equity. The dignity of this court required more diligence, and more respect for its decree.

II

The financial difficulties alleged by the defendant are beside the point. All the necessary sites for incinerators were acquired prior to October 1, 1931, (Report on Re-reference pp 5-6).

Defendant admits that appropriations for all four incinerators recommended by the Special Master had long since been made when the hearings on re-reference were held in July, 1931 (Answer p. 10.) All that was then necessary was a resolution of defendant's Board of Estimate and Apportionment to make the funds immediately available. Defendant's officers so testified and the Special Master so found (Report on Re-reference p. 14). Defendant admits that plans and specifications for four incinerators were ready in September, 1931, before the decree was made (Answer p. 7).

The vague statement that "objectors appeared" when the matter of the four contracts came before The Board of

Estimate and Apportionment on December 18, 1931. (Answer pp. 7-8) presented no valid reason for laying over a matter then under the decree of this court. Defendant admits that this was before its alleged financial difficulties arose. The matter was not then in the descretion of defendant. It was mandatory and required diligence.

That "appropriations" meant "merely authorizations to the Comptroller to sell corporate stock for the purpose of raising the moneys appropriated" (Answer p. 10) was not so explained to the Special Master. He was given to understand differently (report on Re-reference p. 14). He was generous in his allowance of time, which was consented to by defendant in the stipulation for decree (284 U. S. 585, Brief supporting answer p. 13).

The cost of the four incinerators was relatively insignificant (Answer p. 11).

In paragraph 11 of the answer defendant refers to the reluctance of financial and banking houses to loan it money (p. 6). Its notorious extravagance was the reason for that reluctance.

For more than a year past funds of the Reconstruction Finance Corporation have been available for necessary public improvements. Other cities have obtained relief from that source, but defendant has not sought such relief.

III

The statement in the answer of the maximum quantity of garbage and refuse dumped at sea (p. 12) is incorrect with respect to the summer months. The correct amount is 3,000 tons per day (Report on re-reference p. 4; 284 U. S. 585, 586).

IV

Defendant does not show that it has no alternative for dumping at sea during the present summer. Necessity finds a way. So will defendant, if confronted with the necessity for doing so.

No valid reason for delay is disclosed. A serious effort of trying to comply is not disclosed. Plaintiff has suffered long and has been kind, and is entitled to the benefits of its decree.

V

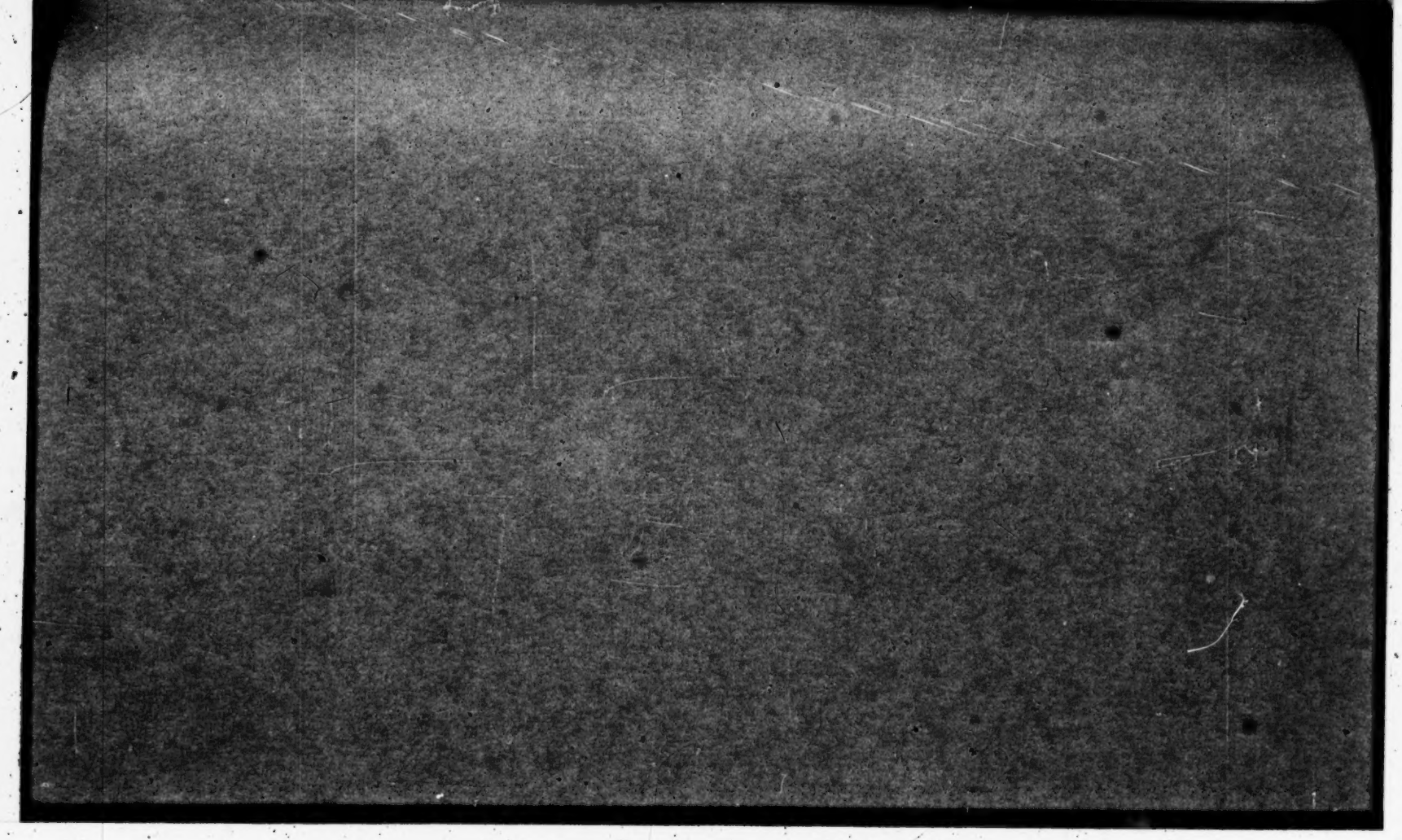
Plaintiff respectfully urges that defendant's application for further relief be denied, and urges the prayer of its petition.

Respectfully submitted,

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff-Petitioner.

May 11, 1933.



FILE COPY

APR 17 1931

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 1 [redacted] iginal.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

Pleadings, Proposed Findings of Fact and Conclusions of Law, Special Master's Report and Defendant's Exceptions.

ARTHUR J. W. HILLY,
Corporation Counsel of the
City of New York,
Solicitor for Defendant.

(22084) The Lewis Print, Inc., 66 Duane Street, New York

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IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. 21, Original.

STATE OF NEW JERSEY,

Plaintiff,

vs.

THE CITY OF NEW YORK,

Defendant.

IN EQUITY.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its bill of complaint herewith submitted.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

Statement.

The purpose of this suit is to restrain the denfendant from committing a nuisance causing damage to the property of the plaintiff and its citizens and a menace to the health of its inhabitants, by dumping garbage and refuse in the Atlantic Ocean off the coast of the plaintiff.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

May 13, 1929.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. 21, Original.

STATE OF NEW JERSEY, *Plaintiff,*

—against—

THE CITY OF NEW YORK, *Defendant.*

IN EQUITY.

BILL OF COMPLAINT.

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The plaintiff, State of New Jersey, by its Attorney-General, brings its bill of complaint against the defendant, The City of New York, and alleges and shows:

I.

1. The plaintiff is a State of the Union having its Capital and seat of government at the City of Trenton, Mercer County, New Jersey, and exercises through its Legislature the powers and duties of sovereignty within its territorial limits under and by virtue of its constitution, including the power and duty to protect and preserve to its citizens certain natural and unalienable rights, including

the acquisition, possession and protection of property and of pursuing and obtaining safety and happiness. This suit is instituted by direction of the Legislature of the plaintiff and with the approval of the Governor thereof, for the use and benefit of the plaintiff as the owner of the property hereinafter mentioned and also as *parens patriae* for the use and benefit of its citizens. Annexed hereto as Exhibit "A" and made a part hereof is a map showing certain geographical and other information referred to in this bill of complaint.

2. The defendant, The City of New York, is a body politic and corporate, organized and existing under and by virtue of the laws of the State of New York, under and by the authority of which it exercises the powers of local administration and government as a political subdivision of said State, having its seat of government in the Borough of Manhattan, in the City, County and State of New York.

II.

3. The jurisdiction of this Court depends upon the ground that this is a suit in which a state is a party, within the provisions of Article III, Section 2, of the Constitution of the United States.

III.

4. From Atlantic Highlands southerly to Cape May, a distance of more than 100 miles, the easterly side of the State of New Jersey borders on the Atlantic Ocean. The portion of this Ocean frontage particularly affected by the acts of the defendant hereinafter complained of extends from Atlantic Highlands to Beach Haven, a distance of more than fifty miles, and is occupied by a continuous succession of adjoining municipalities, which, by reason

of their broad and gently sloping beaches, are adopted to, and their inhabitants are engaged in and rely for their livelihood chiefly upon, the business of maintaining summer resorts, where great numbers of people of all classes and conditions congregate from various parts of the United States in the pursuit of rest, recreation and pleasure.

5. The plaintiff possesses the sovereign ownership of lands along the shore and under the waters of the Atlantic Ocean below high water mark throughout its beach front within its territorial limits, and the use of said beaches and the waters adjacent thereto are common to all the people of the State.

6. Said seashore is famous throughout the United States as a summer resort, and is improved by piers and wharves which are used for public recreation, commerce and fisheries, and by pavilions and bathing beaches and other conveniences used for the health, recreation and pleasure of the citizens of the plaintiff, and others who resort thereto for such purposes. Along the seashore and for several miles landward the territory is improved by hotels, pleasure resorts, country clubs, private residences and magnificent estates, provided and maintained at great expense by or for the benefit of summer visitors and residents.

7. The waters of the ocean adjacent to said shore and beaches are largely used for surf bathing and also for pleasure boating, fishing and other purposes. More than a hundred million dollars have been invested within the beach section particularly affected by the acts of the defendant hereinafter complained of, in Hotels, bathing pavilions, landing and pleasure piers, boardwalks, shore boulevards, and other appurtenant facilities for pleasure, recreation and profit and several thousand persons are constantly employed to maintain and operate the same.

8. The section of the sea coast in question lies between the two great metropoltian areas of New York City and Philadelphia, containing an aggregate population in excess of 12,000,000 people, and all parts thereof are within convenient commuting distance for daily travel by rail or motor vehicles from one or the other of said metropolitan areas. Many thousands of persons live along said seashore during the summer months, and commute daily to their places of business. Said seashore is visited by thousands of excursionists daily during the summer months, and also by many thousands of visitors over holidays and week-ends.

9. The growth, prosperity, and substantial property values of the seashore communities in question have resulted entirely from enterprises dependent upon the popularity and suitability of said waters, beaches and shorefront facilities for fishing, boating, bathing and other seashore recreations and pursuits, and the continuance of these advantages depends primarily upon the ability of the plaintiff, its municipalities and its citizens to keep the waters of the shore and bays pure and wholesome, and the beaches, public highways and shorefront property free from pollution, contamination and unsightly or unhealthy conditions.

10. Along the beach section in question are located more than a hundred fish pounds constructed under licenses issued by the plaintiff, and maintained by its citizens, who have invested therein approximately $700,000. During the year 1928 said fish pounds yielded approximately twenty million pounds of fish having a value of nearly one million dollars. Approximately 500 men are constantly employed in said industry.

11. The defendant, the City of New York, has a population of more than 6,000,000 people, which is increasing

at the rate of approximately 136,000 persons annually. Said defendant disposes of its garbage and other refuse by loading the same upon barges, which are towed out and dumped into navigable waters of the United States, off the coast of the plaintiff.

12. As the population and commerce of said defendant increases the amount of garbage and refuse thus disposed of constantly increases and at the present time many barge loads are thus disposed of daily.

13. Said garbage and refuse consist of all manner of domestic and industrial waste of a substantial nature, including boxes, crates, tin cans, bottles (empty, or containing drugs, medicines or chemicals), papers, rags, discarded household and toilet articles, dead domestic animals, mattresses, decayed or unmarketable fruits, vegetables, meats and fowls, the sweepings and refuse of public streets and markets, victuals and other vegetable and animal fragments from residences, hotels and restaurants; much of which garbage and refuse is in a putrid and decayed condition.

14. A considerable proportion of said garbage and refuse floats upon or beneath the surface of the sea in huge masses or islands, which obstruct and impede the navigation of fishing boats and other craft, until it is driven by winds and tides upon the beaches of the plaintiff, and cast by the waves into heaps and windrows thereon and under, over and above the piers, wharves and pavilions, adjacent boulevards and private property, where it decays and pollutes the sea and land, unless and until removed and disposed of by the municipalities or their citizens.

15. The removal and disposition of said accumulated garbage and refuse from the beaches, boulevards and

other public places requires an expenditure by said municipalities of more than $100,000 per annum, and additional large sums by the citizens of the plaintiff to clean and repair their private property of the filth and damage inflicted thereby.

16. Said garbage and refuse so co-mingled with the waters of the shore and cast upon the beaches and property of the plaintiff and its citizens is poisonous and otherwise injurious to human beings and to fish and other forms of marine life; obstructs and impedes the navigation of the waters of the United States; clogs, tears, injures and destroys the nets of the fish pounds; and renders the waters noxious and offensive and unfit for fishing, boating or bathing.

17. The dumping of said garbage and refuse by the defendant creates a public nuisance which seriously impairs the usefulness, wholesomeness and safety of said waters, beaches and shore front facilities, and of the property of the plaintiff, said municipalities and their citizens, and thereby greatly damages the property and seriously menaces the health, safety and welfare of the plaintiff and its citizens.

18. Said acts of the defendant are repeated and continued from day to day and, unless restrained, will be repeated and continued in perpetuity, to the manifest and irreparable injury of the health, safety, comfort, property and welfare of the plaintiff and its citizens and to others lawfully within the borders of the State, and the plaintiff is without any adequate remedy at law in the premises.

19. Said acts of the defendant takes the property of the plaintiff and its citizens without due process of law in violation of Article XIV, Section 1, of the Constitution of the United States.

20. Said acts of the defendant regulates and destroys the commerce of the plaintiff and its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States.

21. Said acts of the defendant deprive the plaintiff and its citizens of the natural advantages of their position along the seashore, contrary to the sovereign rights of the plaintiff as a member of the Union.

22. Said acts of the defendant violate Title 33, Chapter 9, Section 407 of the United States Code (approved June 30, 1926) and other laws of the United States.

23. Said acts of the defndant are otherwise detrimental to the interests of the plaintiff and its citizens.

IV.

In consideration whereof, and for as much as the plaintiff is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said defendant, the City of New York, may to the best and utmost of its knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ of injunction, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, perpetually restraining and enjoining it, its contractors, officers, agents and employees, and all other

persons acting or claiming or assuming to act under its authority, from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the Ocean or other waters of the United States off the coast of New Jersey, and from otherwise defiling or polluting said waters and beaches, or procuring them to be defiled or polluted as aforesaid;

May it please the court, the premises considered, to grant unto the plaintiff the United States' writ or subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said defendant, The City of New York, commanding it, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honors in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honors shall seem meet, and shall be agreeable to equity and good conscience.

And that the plaintiff may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

And the paintiff, as in duty bound, will ever pray, etc.

STATE OF NEW JERSEY,

By WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

FOLD-OUT IS TOO LARGE TO BE FILMED

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1928.

No. 21, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

ANSWER OF THE DEFENDANT, THE CITY OF NEW YORK.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now, comes the defendant, The City of New York, by Arthur J. W. Hilly, its Corporation Counsel and its Solicitor herein, and, reserving all manner of benefit by objection, exception or otherwise to the many defects, errors, insufficiencies, imperfections and discrepancies in the plaintiff's Bill of Complaint contained, for its answer to the said Bill of Complaint the defendant, The City of New York, respectfully shows to the Court and alleges as follows:

First—That it is without knowledge as to all and singular the allegations contained in that item or division of the Bill of Complaint which is designated "I.", except as to so much thereof as alleges or purports to

allege that the plaintiff is one of the States of the United States of America having its Capitol and seat of Government at the City of Trenton in the State of New Jersey, and except as to the allegations contained in that paragraph or section thereof which is numbered "2".

As to the item or division of the Bill of Complaint which is designated "III," the defendant, The City of New York, says:

Second—That it denies all and singular the allegations contained in those sections or paragraphs or the Bill of Complaint which are respectively numbered 12, 13, 14, 17, 18, 19, 20, 21, 22 and 23.

Third—That it is without knowledge as to all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 4, 5, 6, 7, 8, 9, 10, 15 and 16, and therefore denies the same.

Fourth—That it denies all and singular the allegations contained in the paragraph or section of the Bill of Complaint which is numbered 11 except as to so much thereof as alleges that the defendant, The City of New York, has a population of more than 6,000,000 people which is continuously increasing.

Further answering and for a first defense, the defendant, The City of New York, further alleges:

Fifth—That the Bill of Complaint herein does not state facts sufficient to constitute a cause of action in equity, nor any matter of equity entitling the plaintiff to the relief prayed for or to any relief, nor are the facts stated in the Bill of Complaint sufficient to entitle the plaintiff to any relief against the defendant.

Wherefore, the defendant, The City of New York, prays judgment that the Bill of Complaint herein be dismissed and that it be hence dismissed with its costs and disbursements in this cause sustained and for such other and further relief to this defendant as to the Court may seem meet and proper in the premises.

THE CITY OF NEW YORK,
By ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

J. JOSEPH LILLY,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

IN EQUITY.

MOTION FOR LEAVE TO FILE A REPLY AND FOR THE APPOINTMENT OF A SPECIAL MASTER.

Comes now the State of New Jersey, by its Attorney-General, and asks leave of the Court to file its reply, herewith submitted, and also for the appointment of a Special Master to take testimony and prepare and file his findings, with recommendations for a decree herein.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

October 7, 1929.

Reply.

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

IN EQUITY.

REPLY.

The plaintiff joins issue on the answer of the defendant.

WILLIAM A. STEVENS,
Attorney-General.

DUANE E. MINARD,
Assistant Attorney-General,
Solicitors for Plaintiff.

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

NOTICE.

To:

Hon. WILLIAM A. STEVENS,
Attorney-General of the State of New Jersey;

Hon. DUANE E. MINARD,
Assistant Attorney-General of the State of New Jersey,
Solicitors for the Plaintiff.

SIRS:

PLEASE BE ADVISED that on Monday, February 2d, 1931, the defendant, The City of New York, will apply to the above named Court for leave to file its Amended Answer herein, a copy of which is annexed hereto, and for the relief prayed for in the annexed motion.

Dated, January 27, 1931.

ARTHUR J. W HILLY,
Corporation Counsel,
Solicitor for the Defendant,
The City of New York.

IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1929.

No. 18, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

AMENDED ANSWER OF THE DEFENDANT, THE CITY OF NEW YORK.

TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Now, comes the defendant, The City of New York, by Arthur J. W. Hilly, its Corporate Counsel and its Solicitor herein, and, reserving all manner of benefit by objection, exception or otherwise to the many defects, errors, insufficiencies, imperfections and discrepancies in the plaintiff's Bill of Complaint contained, for its amended answer to the said Bill of Complaint the defendant, The City of New York, respectfully shows to the Court and alleges as follows:

First—That it is without knowledge as to all and singular the allegations contained in that item or division of the Bill of Complaint which is designated "I," except as to so much thereof as alleges or purports to allege

that the plaintiff is one of the States of the United States of America having its Capitol and seat of Government at the City of Trenton in the State of New Jersey, and except as to the allegations contained in that paragraph or section thereof which is numbered "2."

As to the item or division of the Bill of Complaint which is designated "III," the defendant, The City of New York, says:

Second—That it denies all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 12, 13, 14, 17, 18, 19, 20, 21, 22 and 23.

Third—That if is without knowledge as to all and singular the allegations contained in those sections or paragraphs of the Bill of Complaint which are respectively numbered 4, 5, 6, 7, 8, 9, 10, 15 and 16, and therefore denies the same.

Fourth—That it denies all and singular the allegations contained in the paragraph or section of the Bill of Complaint which is numbered 11 except as to so much thereof as alleges that the defendant, The City of New York, has a population of more than 6,000,000 people which is continuously increasing.

Further answering and for a first defense, the defendant, The City of New York, further alleges:

Fifth—That the defendant, The City of New York, has for many years last past dumped the garbage and some refuse collected by it in the Atlantic Ocean under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said supervisor under the authority conferred

on him by Chapter 496 of the Laws of United States of 1888, June 29, Sec. 1 (25 Statutes 209, as amended, now Title 33, Chapter 9, Sections 441, 443, 449 and 451, United States Code, approved June 30, 1926), at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12½ and 22 miles distant respectively from the New Jersey shore (being greatly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States; that in view of the dumping of said garbage and refuse on the high seas by said City of New York in the manner and at the points aforesaid, this Court has no authority to enjoin said City, the defendant herein, from said dumping of garbage and refuse so performed.

Further answering and for a second defense, the defendant, The City of New York, further alleges:

Sixth—That garbage and refuse in large quantities, including fruit, fruit skins, pieces of meat, vegetables, mattresses, electric light bulbs, pillows, bottles of all sorts, tin cans, boards, barrels, crates and parts thereof, and other pieces of wood, has for many years last past been and is being dumped into the Atlantic Ocean from steamships and other floating equipment, both inside and outside of the entrance to New York Harbor and into the sea lane for vessels clearing for ports south of New York and returning therefrom at distances from 2½ to 8 miles from the shore of New Jersey from Highlands to Barnegat Lighthouse; that cargoes of condemned foodstuffs are and have been for many years past dmped into the sea at a point about 25 miles southeast of Scotland Lightship; that private contractors (i. e. other than those employed in connection with dumping of garbage by The City of New York) have for many years last past dumped under permits issued by the Supervisor of the Harbor of New

York under said Title 33, Chapter 9, Sections 441, 443, 449 and 451, United States Code, into the Atlantic Ocean at points from 3 to 8 miles southeast of Scotland Lightship, excavated and refuse material from demolished buildings in the City of New York, which material often contains large quantities of refuse, especially boards, planks, barrels, barrel staves, crates and other pieces of wood, also bottles of all sorts, tin cans, etc.; that such private contractors and the United States Navy Yard, located in the City of New York, also for many years last past, have been dumping garbage into said ocean, either at points from 8 to 20 miles distant southeast from said Scotland Lightship or nearer thereto under such permits issued by the Supervisor of the Harbor of New York, as aforesaid; that insufficiently treated and foul and unsanitary sewage from the cities of Long Branch and Asbury Park on the coast of New Jersey has been, for a number of years last past, and is being discharged into the Atlantic Ocean a short distance from the beach at each of those cities; that all of said garbage, refuse, sewage and other offensive matter is of the same kind and character as that dumped by The City of New York at points from 8 to 20 miles southeast of Scotland Lightship and from 10 to 22 miles from the New Jersey shore; that such garbage, refuse, sewage and other offensive matter discharged as aforesaid by private contractors, by the United States Navy Yard authorities and by said New Jersey cities into the waters of the Atlantic Ocean in large quantities, would float under the influence of the tide and winds into the waters and onto the beaches of the State of New Jersey and its municipalities claimed to be polluted in this action, and it is impossible to determine whether garbage, refuse and other offensive matter in substantial quantities dumped into the sea as aforesaid by The Ciy of New York is deposited in the waters of the State of New Jersey and on its beaches or in

greater quantities than garbage, refuse and offensive matter deposited in the sea by other agencies than The City of New York, as aforesaid, and that if any injury or damage is suffered by the State of New Jersey and/or its citizens or inhabitants or to their health, safety or property, it is not and cannot be chargeable to the acts of the defendant.

Further answering and for a third defense, the defendant, The City of New York, further alleges:

Seventh—That the Bill of Complaint herein does not state facts sufficient to constitute a cause of action in equity, nor any matters of equity entitling the plaintiff to the relief prayed for or to any relief nor are the facts stated in the Bill of Complaint sufficient to entitle the plaintiff to any relief against the defendant.

WHEREFORE, the defendant, The City of New York, prays judgment that the Bill of Complaint herein be dismissed and that it be hence dismissed with its costs and disbursements in this cause sustained and for such other and further relief to this defendant as to the Court may seem meet and proper in the premises.

THE CITY OF NEW YORK,
By ARTHUR J. W. HILLY,
Corporation Counsel,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 17, ORIGINAL.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

The defendant herewith submits its proposed findings of fact which it deems established by the evidence and its proposed conclusions of law which it requests that the Special Master find and make.

Dated, New York, February 25, 1931.

ARTHUR J. W. HILLY,
Corporation Counsel of The City
of New York,
Solicitor for the Defendant.

Findings of Fact.

1. That the City of New York is a domestic municipal corporation created by and existing under the laws of the State of New York, under and by which its exercises local administration and government as a political subdivision of said State.

[See complaint allegations, undenied.]

2. That the plaintiff is one of the States of the United States of America and was and is authorized to bring this suit by the Legislature of said State, with the approval of its Governor.

[See complaint allegations, undenied.]

3. By Chapter 378 of the Laws of 1897, of the State of New York, known as The Greater New York Charter, various municipalities of the State of New York were united and consolidated into the City of New York, which was thereby divided into five boroughs, known, respectively, as the Boroughs of Manhattan, The Bronx, Brooklyn, Queens, and Richmond.

4. That at the time of the commencement of this suit the population of said city exceeded six million people.

5. By said Chapter 378 of the Laws of 1897 of the State of New York a Department of Street Cleaning was created in the municipal government of said City, with jurisdiction over the removal and disposition, as often as the public health required, of ashes, refuse, street sweepings and garbage collected in said city.

6. By Chapter 466 of the Laws of 1901 of the State of New York, amending Chapter 378 of the Laws of 1897, jurisdiction over the removal and disposition of said ashes, refuse, street sweepings and garbage of the Boroughs of Queens and Richmond was transferred from the Department of Street Cleaning to the respective borough presidents of said boroughs of said city.

7. That by Local Law No. 13 of 1929 of The City of New York (duly adopted by the Municipal Assembly of The City of New York, in accordance with the provisions of Chap. 363 of the Laws of 1924 of the State of New York), in force from and after December 1st, 1929, amending and supplementing said provisions of said Greater New York Charter, as amended, a Department of Sanitation was created, to which was transferred jurisdiction over the removal and disposition of ashes, refuse, street sweepings and garbage collected in all of said five boroughs of said City.

[For references pars. 3-7 inclusive hereof, see Appendix to Brief.]

8. That from the latter part of 1896 to 1918, with the exception of a few months in the year 1903, The City of New York did not deposit any garbage or refuse at sea.

[See par. 9.]

9. That during said period (1896 to 1918) all New York City garbage was disposed of by reduction (burning) at Barren Island (in Jamaica Bay) at the plant of the New York Sanitary Utilization Company.

[For references pars. 8-9, see brief, p. 5; also S. M. pp. 1706-1707; Pr. A. 566-567; Plff.'s Exs. 321, 322, 323.]

10. That The City of New York has never collected and disposed of the garbage from manufacturing buildings, hotels, etc.

[See S. M. 1703; Pr. A. 565.]

11. That it has been the practice of The City of New York during said years to take some of its street sweepings and refuse to fill in low-lying city land, although a substantial portion thereof was dumped at sea.

[S. M. p. 1703-1704; Plff.'s Ex. 326.]

12. That early in 1918 The City of New York entered into a contract for the disposition at a plant at Linoleumville, Staten Island (Borough of Richmond), of all garbage collected, but in October, 1918, the contractor went into bankruptcy, and disposal thereunder ceased.

[S. M., pp. 1707-1708; Pr. A. 567; Brief, p. 6.]

13. That the City of New York then tried to re-let such contract by advertising for bids therefor, but on account of war-time conditions, no offers to undertake such a contract were received from contractors.

[S. M., p. 1708, Pr. A. 567; Brief, p. 6.]

14. That the City of New York then requested permission from the United States Government through its Supervisor of the New York Harbor to permit the dumping of its garbage at sea as a temporary or emergency measure, and the request was granted.

[S. M., pp. 1708, 1730, Pr. A. 567, 575; Brief, p. 7.]

15. That on collection this garbage is taken to docks or dumping boards on the waterfront of said city and is then dumped into city-owned barges, which are designated by the initials of the departmental name and letters of the alphabet, and these are towed to sea by tug-boats chartered from and in charge of contractors, and the contents are there dumped.

[S. M., pp. 1634, 1703, 1726-1727, 1738, Pr. A. 545, 565, 574, 578.]

16. That a committee of New York City officials and other persons was, about 1919, formed to devise a method for the disposition of garbage other than dumping at sea, and after much discussion and investigation of methods employed by other cities, it was determined to resort to incineration rather than reduction.

[S. M., pp. 1709-1711, Pr. A. 567-568.]

17. That three incineration plants were built in the Borough of Manhattan as a result of an appropriation of $5,000,000 made in July, 1921, the first being completed in February, 1924, the second in November, 1925, and the third on October 1, 1928, the cost of each incinerator being about $1,000,000 exclusive of the cost of the land on which built.

18. That all of said plants consume more than their contract capacity of garbage, the first by running 24 hours a day, disposing of 450 tons daily, the second by running 24 hours a day, disposing of 370 tons daily, and the third by running 24 hours a day, disposing of about 400 tons daily.

[Pars. 17-18 see S. M. 1712-1716, Pr. A. 569-570.]

19. That the commencement of building operations on a fourth site was halted by injunction duly obtained in the Supreme Court of the State of New York.

[S. M. 1716-1717, 1719, Pr. A. 570, 571; 214 App. Div. (N. Y.) 70.]

20. That in the Borough of Brooklyn there are two incinerators, each with a capacity of 100 tons a day, and three with a capacity of 500 tons a day each, all now in operation, built by a contractor under a contract to dispose of all material that may be delivered and since December 1st, 1929 no garbage from that borough has been dumped at sea.

[S. M. 1718, 1723, Pr. A. 570-571, 572.]

21. That in the Borough of Queens there are now nine incinerators operating, with an average daily garbage and refuse consumption of from 100 to 270 tons, and that borough has never dumped any of its garbage at sea.

[S. M. 1722-1723, Pr. A. 572.]

22. That in the Borough of Richmond there are now three incinerators in operation and none of the garbage from that borough has been or is now being dumped at sea.

[S. M. 1722-1723, 1797, Pr. A. 572, 593.]

23. That garbage dumping at sea is done by the City of New York practically every day of the year, except when heavy weather prevents, two or more scows often dumping one after the other near the same spot, each scow containing about 1200 to 1300 cubic yards of garbage and ashes.

[S. M. 1611, 1653-1654, 1727; Pr. A. 539-540, 550, 574.]

24. That approximately only 27% of the garbage collected in the City of New York is dumped at sea, the greatest proportion of which comes from the Borough of The Bronx, and such amount will be continually reduced.

[S. M. 1724, 1747; Pr. A. 572-573, 580.]

25. That an average of about 120,000 cubic yards of garbage is dumped at sea monthly throughout the year, ranging from 192,000 cubic yards in June, 1929, to about 52,000 cubic yards in February, 1930.

[S. M. 1742-1744; Pr. A. 579.]

26. That the Department of Sanitation has planned for the construction of nineteen additional incinerators, five 500-ton plants in Manhattan, four 500-ton plants in The Bronx, five 500-ton plants in Queens and five 500-ton plants in Brooklyn, and the reconstruction of two plants in Richmond, and this program contemplates completion of the last of these incinerators in 1934.

[S. M. 1796; Pr. A. 592-593.]

27. That the scows of private contractors having no connection with the City of New York containing "cellar dirt", *i. e.*, debris from buildings that have been torn down consisting of joists, timbers, laths, plaster, etc., of a very light kind, have for years been dumped and are being dumped into the Atlantic Ocean under permit from the Supervisor of the Harbor of New York at a point about four miles southeast of Scotland Light Ship.

[S. M. 1607, 1638, 1644-1645; Pr. A. 537, 545, 547.]

28. That in such scows so dumped, much other material is often placed consisting of rags, barrel staves, broken boxes, planking up to ten feet in length, milk bottles, mayonnaise bottles, ketchup bottles, tin cans, bottle covers and caps with the name "Sheffield Farms, Grade A, Pasteurized Milk", "Sealect Certified Milk" thereon, garbage (onions, grape skins, scallops) leather harness, grapefruit skins, banana skins, magazines, etc.

[S. M. 1803-1822; Pr. A. 595-602; Deft.'s Exs. 6, 7.]

29. That garbage has for many years been and is being dumped at sea from scows of the City of New York under permits issued by the Supervisor of the Harbor of New York and such scows when going to sea are accompanied by a United States Dumping Inspector to enforce requirements that dumping does not take place short of the designated dumping grounds.

[S. M. 1602-1604, 1606; Pr. A. 535-537; Brief, 13-17.]

30. That reports of said dump inspectors were received in evidence showing that dumping by defendant's garbage scows had been made in accordance with the requirements of the permits issued.

[S. M. 1614-1619; Pr. A. 541, Deft.'s Exs. 1-3.]

31. That inspection of outward and inward bound City scows or tows is also made by United States Patrol boats to note the time of going out and coming in for checking by said Supervisor's office to see whether the elapsed time between departure and return is sufficient for reaching and returning from said dumping points.

[S. M. 1604; Pr. A. 536.]

32. That the New York City garbage scows have for years dumped their loads under permit from the Supervisor of the Harbor of New York for three or four months in mid-winter at a point about 8 miles southeast of Scotland Light Ship, being about 12 miles from the New Jersey shore; for three or four months in summer at a point about 20 miles southeast of such Light Ship or about 22 miles off the New Jersey shore, and for two short periods between these times at a point about 12 miles southeast of such Light Ship or about 12½ to 13 miles from the New Jersey shore.

[References to 29, 30, 31 and 32 see S. M. 1606, 1656, 1948; Pr. A. 537, 551, 637.]

33. That cargoes of condemned food stuffs (vegetables, fruits, etc.), are also dumped at sea under permit from the Supervisor of the Harbor of New York at a point 25 miles from the New Jersey shore.

[S. M. 1610, 1860-1861, 1918; Pr. A. 539, 616, 629.]

34. That Brooklyn Navy Yard scows, containing refuse and garbage, also dump at sea at the regular dumping points at which New York City garbage is dumped.

[S. M. 27, 1612-1613; Pr. A. 540.]

35. That the Supervisor of the Harbor of New York, in his report for 1929, stated that it is probable that a great deal of garbage is dumped both outside and inside the harbor entrance by the enormous tonnage passing in and out of New York Harbor, and also that the local floating equipment throws more or less garbage overboard.

[S. M. 1622; Pr. A. 541-542, Pltf.'s Ex. 335, p. 2081.]

36. That the records of the Collector of the Port of New York show that in 1928-1929 the following was the number of vessels clearing from and entering such port from points south thereof for periods of two months at a time:

Months of December, 1928, and January, 1929, foreign and coastwise vessels entering, 1,227; clearing, 1,173.

Months of July and August, 1929, foreign and coastwise vessels entering, 1,105; clearing 1,192.

or on an average of about 40 vessels per month.

[S. M. 1661-1664; Pr. A. 553-554.]

37. That the sea lane or route for coastwise ships going to and coming from points south of New York is about 2½ to 3 miles off the New Jersey coast at Sea Bright, Monmouth Beach and Asbury Park; 5 miles at Sea Girt, and 8 miles at Barnegat Light House.

[S. M. 1660, 1762; Pr. A. 553, 584.]

38. That practically all freight and passenger ships leaving and entering New York harbor (especially those leaving) dump more or less garbage and refuse in such sea lane.

[S. M. 1664-1667, 1763-1765, 1975, 1985-1986; Pr. A. 554-555, 584-585, 643, 646.]

39. That many freight and passenger lines and ships feed their crews in port and none of their garbage or refuse is removed by the City or disposed of by the ship while in port, but such accumulations, consisting of bottles, tin-cans, eletric light bulbs, pieces of meat, fruit, other food waste, wood, mattresses, pillows, shoes, old clothes, boxes,

barrels, crates, etc., are dumped after passing south of Scotland Lightship.

[S. M. 1665-1668, 1763, 1888, 1990; Pr. A. 554-555, 584, 624, 647-648.]

40. That passenger and freight ships often anchor in great numbers during a fog for 24 hours or more just outside of the harbor and dump garbage accumulated during that period into the sea, where they are anchored.

[S. M. 1667-1668; Pr. A. 555-556.]

41. That the holds of cargo boats are usually swept in port after the removal of the cargo (and before reloading); such sweepings, and also sweepings from the forecastle, are placed on deck for dumping in addition to garbage and refuse, and all are dumped in said sea lane for coastwise ships shortly after passing Scotland Lightship on the way south.

[S. M. 1687-1689, 1763-1764, 1857-1860, 1890-1893, 1989, 1993; Pr. A. 560-561, 584, 615, 625, 647, 648.]

42. That fruit, vegetables, poultry, and other food supplies delivered to the ships in port to feed passengers and crews, are usually packed in crates, barrels and boxes, which have the names on them of the New York dealers from whom they are bought, and such crates, boxes and barrels, partly broken up, are, on most ships, piled on deck and dumped, with other refuse, in said sea lane shortly after passing Scotland Lightship on the way south.

[S. M. 1668-1669, 1765-1766; Pr. A. 556, 585.]

43. That the United States Government, through the Supervisor of the Port of New York, maintains shore dump inspectors, and also patrol boats which patrol New York Harbor and adjacent waters, to see that the Government requirements of the dumping permits are complied with.

[S. M. 25, 81, 1608-1609, 1910, 1918, 1934; Pr. A. 8, 22, 537-538, 627, 628, 633.]

44. That both steamship lines and City scows occasionally violate United States Government regulations in respect to dumping but the City has always endeavored to co-operate with the Government when the matter has been brought to the attention of the Commissioner of Street Cleaning and the Commissioner of Sanitation.

[S. M. 1921-1922; Pr. A. 630.]

45. That insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park on the Atlantic Coast of New Jersey, has been and is being discharged into the Atlantic Ocean within a short distance from the beaches at each of those cities.

[S. M. 1849-1854, 1870-1871, 2005-2006; Pr. A. 612-614, 619, 653, Deft.'s Exs. 9, 10, Esp., pp. 16, 31-33, 14.]

46. That six different inspections made by an official from the office of the United States Supervisor of the Harbor of New York in February, March and April, 1929, of garbage dumpings by New York City scows at the 8 and 12 mile dumping points, where the drift of the garbage was followed for periods of from 12 to 24 hours each, did not reveal a single occasion when the garbage reached any shore.

[S. M. 1944-1954; Pr. A. 636-639.]

47. That the garbage dumped on these occasions drifted, sometimes toward the New Jersey, and sometimes toward the Long Island shore, at the rate of about a mile an hour when the wind blew at the rate of 35 miles an hour, the direction and rate of the drift varying with the changes of the wind.

[S. M. 1944-1954; Pr. A. 636-639.]

48. That when dumped, the lighter portion of the garbage floats, while the heavier portion sinks, but that gradually some of that which first floated sinks, leaving a very considerably smaller portion floating at the end of 24 hours than at the time of dumping.

[S. M. 56, 153, 197, 1650-1653, 1657, 1863-1864-1957; Pr. A. 17, 40, 50, 549-550, 552, 617, 639.]

49. That The City of New York has not dumped garbage and refuse in the ocean for many years in any appreciable quantities within a marine league (three nautical miles) of the shores of the State of New Jersey, except on rare occasions either when necessary to preserve life where a scow was in danger of foundering, or when there is some unauthorized action on the part of individuals employed by the contractors in charge of the scows or tow boats.

[S. M., see References under 29-32, incl., above; also S. M. 1401, 1619, 1627, 1922; Pr. A. 466, 543, 630.]

50. That the territorial waters of the plaintiff do not extend more than one marine league or three nautical miles from the Atlantic Coast shore line of said State of New Jersey at low water mark.

[Comp. Stats. of New Jersey, see pp. 23-27 Deft.'s Brief.]

51. That the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid are not within the territorial limits of the plaintiff.

[References under 50 above.]

52. That garbage and refuse dumped by the defendant into the Ocean as aforesaid has not found its way in any substantial quantities into the territorial waters or on to the beaches of the plaintiff.

[Evidence cited and reviewed in Deft.'s Brief, Point III, C-2 and C-4 (Part), pp. 44-58.]

53. That the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid are not within the navigable waters of the United States.

[Deft.'s Brief, Point II, B. pp. 23-29.]

54. That the dumping of garbage and refuse at sea as aforesaid by the defendant has not caused substantial injury to the navigation of the ocean by the plaintiff or its citizens or visitors.

[See under 58.]

55. That the dumping of garbage and refuse at sea as aforesaid by the defendant has not caused any substantial injury to bathing or bathing rights or property connected therewith on the part of the plaintiff or any of its citizens or visitors.

[See under 58.]

56. That the dumping of garbage and refuse at sea as aforesaid by the defendant has not caused any substantial injury to fishing or fishing rights or property used in connection therewith of plaintiff or its citizens or visitors.

[See under 58.]

57. That the dumping of garbage and refuse at sea as aforesaid by the defendant has not substantially injured or menaced and does not substantially injure or menace the health safety, comfort or welfare of the State of New Jersey or of any of its citizens or visitors thereto.

[See under 58.]

58. That the dumping of garbage and refuse at sea as aforesaid by the defendant has not caused any substantial injury to the commerce of the plaintiff or its citizens.

[In respect to 53-58 inclusive, evidence cited and reviewed in Deft.'s Brief, pp. 63-66.]

59. That whatever garbage and refuse dumped into the ocean comes into the waters of the State of New Jersey and on to its beaches does so, for the most part, only when there is a high wind from the northeast, east or southeast.

[S. M. 289, 297, 480, 552-553, 709, 917, Pr. A. 72, 74, 133, 156, 215, 286.]

59a. That the prevailing winds along the coast of the plaintiff range from southwest to north, that is, they are off shore winds.

[S. M. 1670-1671, 1869, Pr. A. 557, 619.]

60. That the dumping of garbage and refuse at sea by defendant as aforesaid has not caused and does not cause any substantial depreciation to the value of the plaintiff's property or that of its citizens, has not retarded and does not retard the growth and economic development of plaintiff's territory and that of its municipalities in any substantial manner, and has not imposed and does not impose in any substantial manner upon plaintiff's municipalities and inhabitants, a constant or considerable expense in re-

moving defendant's garbage and refuse from public and private property.

[See under 58 above.]

61. That the size, summer population, property investments and assessed value of property of practically all of the New Jersey communities and municipalities located along the Atlantic Ocean shore front from Highlands to Seaside Park has increased greatly during the period from 1919 to 1929, during which the City of New York has been dumping a portion of its garbage and refuse into the Atlantic Ocean, as aforesaid.

[S. M. 229-240, 407, 459-460, 587, 599-600, 616-617, 695-696, 826-828, 878, 898, 905, 1178-1186, 1292, 1319, 1443-1445; Pr. A. 57-59, 109, 128, 168, 173, 180, 209, 255-256, 274, 280, 282, 377-381, 419, 428, 483-485.]

62. That although much more garbage and refuse, etc., has been dumped at sea by the City of New York during the summer months than during those of winter, the summer population of, and visitors to all of the New Jersey, Atlantic shore front communities and municipalities claimed by plaintiff to have been injured is and are many times greater than in the winter.

[S. M. 232-233, 418, 604, 610-611, 769-770, 822-823, 877-878, 896, 996, 1177, 1443; Pr. A. 58-59, 113, 174, 175, 236-237, 254, 273-274, 280, 313, 377, 483; Plff.'s Exs. 58-65; Deft.'s Ex. 12.]

63. That the dumping in the ocean by the defendant more than a marine league from the New Jersey coast at points 8, 12 and 20 miles southeast of Scotland Light Ship designated by the United States Supervisor of the Harbor of New York, and under conditions imposed by him, of

about 27% of the garbage collected by said City is not in fact an unreasonable disposition of its total garbage collections, pending the carrying out of its plans for the installation of additional incinerators.

[S. M. 1389- 1391, 1707-1725, 1795-1799; Deft.'s Ex. 12, Plff.'s Ex. 257; Pr. A. 458-459, 567-573, 592-594.]

64. That from 1896 to 1918 except for a few months in 1903, no New York City garbage and only a part of its refuse was dumped at sea, yet during that period a large amount of garbage and refuse was washed up into the New Jersey waters and on to its Atlantic shore front beaches.

[S. M. 1119, 1288, 1337, 1363, 1490-1491; Pr. A. 358, 417, 434, 444, 497, also S. M. 1706-1707; Pr. A. 566-567; Plff.'s Exs. 321, 322, 323.]

65. That the plaintiff failed to produce on the trial of this action any scientific or expert evidence as to the effect of ocean currents or tides upon the movement of objects dumped into the ocean at from 10 to 22 miles from the New Jersey shore and floating partially or wholly submerged in the ocean.

[See brief, Point III, C-4, pp. 56-58.]

66. That the deposit in substantial quantities in the Atlantic Ocean at points varying from 2½ to 8 miles from the Atlantic shore front of the plaintiff State, commencing with the minimum distance at Sandy Hook and extending to Barnegat Light House where the maximum distance existed, of garbage, refuse and cellar dirt (material taken from demolished buildings in New York City), by steamships and other floating equipment, and by scows of private contractors, of the same kind and character as that de-

posited in said ocean as aforesaid by defendant much further away from said shore front of the plaintiff, and the deposit of garbage and refuse in said ocean by the United States Navy Yard authorities at the points where defendant dumped, and the deposit in said ocean less than one-half mile from plaintiff's said shore front of insufficiently treated and unsanitary sewage from the Cities of Long Branch and Asbury Park makes it impossible to determine as a fact whether garbage and refuse and other offensive matter in substantial quantities is deposited by defendant in the waters of the State of New Jersey or on its beaches.

[Evidence cited in Defendant's Brief, Point III, C-4, pp. 58-61.]

Conclusions of Law.

(No references to the brief to support particular conclusions will be given.)

1. That the defendant, The City of New York, is a municipal corporation and a political subdivision of the State of New York administering governmental functions in the localities described in Sections 1 and 2 of Chapter 378 of the Laws of 1897 of the State of New York, as amended by Chapter 466 of the Laws of 1901 of said State and subdivided into five boroughs therein described.

2. That the Department of Street Cleaning and the Presidents of the Boroughs of Queens and Richmond of The City of New York for many years prior to and until December 1, 1929, and thereafter the Department of Sanitation thereof, had jurisdiction in said City over the removal and disposition as often as the public health

required of ashes, refuse, street sweepings and garbage in said City.

3. That the dumping in the Atlantic Ocean since the year 1918 of garbage and refuse of the defendant at points 8, 12 and 20 miles southeast of Scotland Light Ship and about 10, 12 and 22 miles respectively from the Atlantic shore of the State of New Jersey, or much more than one marine league from said shore and its waters was not and is not a nuisance *per se*.

4. That the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Light Ship and from the New Jersey shore as above mentioned was not and is not a dumping thereof in the navigable waters of the United States.

5. That the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Light Ship and from the New Jersey shore as above mentioned was not and is not a dumping thereof in the territorial waters of the State of New Jersey.

6. That the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Light Ship and from the New Jersey shore as above mentioned was a dumping thereof on and into the high seas.

7. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not obstructed and does not obstruct or impede the navigation of the waters of the United States or of the State of New Jersey.

8. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not injured or destroyed and does not injure or destroy the bathing or fishing rights or property therein of the plaintiff or of its citizens or visitors thereto.

9. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not regulated or destroyed and does not regulate or destroy the commerce of the State of New Jersey and/or its citizens in violation of Article I, Section 8, Paragraph 3 of the Constitution of the United States or of any statute of the United States.

10. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not taken and does not take any property or right of the plaintiff and/or its citizens without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

11. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not violated and does not violate Title 33, Chapter 9, Section 407 of the United States Code, approved June 30, 1926, nor any other statute or law of the United States.

12. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not violated and does not violate Public Laws of New Jersey, 1882, page 155 (3 Compiled Statutes "Pilot's" Sec. 47, p. 3958), nor any other statute of the State of New Jersey.

13. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse has not de-

prived and does not deprive the plaintiff and/or any of its citizens of the natural advantages of its or their position along the seashore contrary to the sovereign rights of said State as a member of the Union or of any such rights.

14. That the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse under permit from and supervision of the government of the United States through its Supervisor of the Harbor of New York and in accordance with the provisions of Title 33, Chapter 9, Sections 441-451 inclusive, United States Code (Approved June 30, 1926), and preceding statutes on which founded, is a compliance with each and every regulation and statute of the United States relating to navigation, commerce and/or any other subject over which Congress has exercised the jurisdiction of the United States.

15. That by reason of the dumping in the Atlantic Ocean by the defendant of garbage and refuse at the places, in the manner and under the sonditions aforesaid, no justiciable controversy between the plaintiff and defendant is presented over which the Supreme Court of the United States has authority, jurisdiction or control under Article III, Section 2 of the Constitution of the United States or any other Article of said Constitution or under any statute of the United States or under the common law.

16. That the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid of garbage and refuse has not been and is not an unreasonable disposition of the same as a matter of law.

17. That the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid of garbage and refuse has not created and does not create a

public nuisance as a matter of law in respect to the plaintiff and/or its citizens or visitors or a public nuisance which seriously impairs the usefulness, wholesomeness and safety of the waters, beaches and shorefront facilities of the plaintiff, or its citizens or damages the property of said plaintiff, its municipalities and other citizens or their health, safety and welfare.

18. That the plaintiff herein must prove its claims and case against the defendant herein by clear and convincing evidence.

19. That the plaintiff herein failed to prove by clear and convincing evidence that any substantial portion of the garbage and refuse which found its way into the waters of the State of New Jersey or on its shores or beaches was that which was dumped into the Atlantic Ocean by the defendant.

20. That by reason of the deposit in substantial quantities of garbage, refuse, cellar dirt and unsanitary sewage in the Atlantic Ocean by agencies other than the defendant at points much nearer the coast of plaintiff, or no further therefrom, than where deposits of garbage and refuse are made by the defendant in said ocean as aforesaid, it is impossible to determine whether such garbage and refuse deposited by defendant in said ocean off the coast of the plaintiff reaches its waters and beaches in substantial quantities, and therefore defendant is not liable to the plaintiff for the injuries alleged to have been suffered by the plaintiff, its citizens and visitors.

21. That the plaintiff has failed to prove facts sufficient to constitute a cause of action in equity for the relief demanded in the complaint or for any relief in equity whatever.

22. That the defendant is entitled to a dismissal of the complaint herein with costs to the defendant.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES.

October Term, 1930.

No. 17, Original.

STATE OF NEW JERSEY,
Plaintiff,

—against—

THE CITY OF NEW YORK,
Defendant.

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Plaintiff respectfully submits the following proposed findings of fact and conclusions of law, arranged in accordance with its brief.

PART I.

(pp. 1-6 of brief.)

General Findings of Fact.

1. This is an original action brought on behalf of the State of New Jersey by its Attorney General, pursuant to an act of the Legislature thereof in the form of a resolution approved April 16, 1929.

2. The complaint alleges that defendant disposes of its garbage and other refuse by dumping the same in the navigable waters of the United States off the coast of plaintiff, thereby creating a public nuisance in the waters and on the shore within the territorial limits of the plaintiff, and prays for an injunction to restrain the same.
(48)

General Conclusions of Law.

1. Plaintiff is a sovereign state of the Union charged with the duty of protecting its own waters and property and the property and rights of its municipalities and citizens.

2. Defendant is a municipal corporation in, and a citizen of, the State of New York.

3. A justiciable question is presented and this court has jurisdiction under Article 3, Section 2 of the Constitution and Title 28, Section 341 of the U. S. Code.

PART II.

(1)

Plaintiff has an interest as owner of the shore, between high and low water marks, and of the bed and waters of the marginal sea adjacent thereto, within its territorial limits.

(pp. 7-33 of brief.)

Findings of Fact.

1. From the boundary line between the States of New York and New Jersey at a point north of Sandy Hook, to Cape May, a distance of approximately 100 miles, the State of New Jersey borders on the Atlantic Ocean.

2. Said shore front from said boundary line to Beach Haven, a distance of more than fifty miles, is involved in this suit.

3. Defendant is proprietary owner of 285,055 lineal feet, or about 54 miles, of the shore or beach between high and low water marks, between Seabright and Beach Haven, along the section of the sea cost involved in this suit, together with the marginal sea adjacent thereto throughout the entire length of its eastern border.

Conclusions of Law.

1. Plaintiff has proprietary title to the shore, between high and low water marks, and to the bed and water of the marginal sea adjacent thereto within its territorial limits, which title it holds in trust for the benefit of its subjects, who are entitled to use such shore, bed and water for the purposes of navigation, fishing, bathing, sustenance and recreation.

2. Plaintiff's title thereto, and said rights of its subjects therein, are exclusive within the territorial limits of the plaintiff, subject only to the common right of navigation of others.

3. The marginal sea of plaintiff extends at least one marine league, or three nautical miles, seaward from a straight line drawn between Montauk Point and Cape May.

4. The places where defendant dumps its garbage and refuse are within the territorial limits of plaintiff.

5. Plaintiff has an interest as owner of the shore, between high and low water marks, and of the bed and waters of the marginal sea adjacent thereto, within its territorial limits.

PART III.

(2)

Plaintiff has an interest as parens patriae to protect the property, health and prosperity of its inhabitants.

(pp. 34-42 of brief.)

Finding of Fact.

Within the shore front involved in this case, in addition to the shore front between high and low water mark owned by the plaintiff, plaintiff's municipalities own 13,270 lineal feet and its citizens own 64,818 lineal feet thereof. (50)

Conclusions of Law.

1. On behalf of such municipalities and citizens as have obtained grants from plaintiff for said shore property, and on behalf of all of the inhabitants of plaintiff, those residing in the twenty-nine municipalities involved, as well as those from other sections who use the sea and beaches for the purpose of fishing, boating, bathing and other forms of commerce or recreation, or who are engaged in enterprises dependent upon the patronage of those of plaintiff's inhabitants who reside in or frequent said municipalities for such purposes, plaintiff has an interest in this suit in the character of *parens patriae* as guardian and protector of the property, health and welfare of its inhabitants.

2. Plaintiff has an interest as *parens patriae* to protect the property, health and prosperity of its inhabitants.

PART IV.

(3)

Defendant has no legal right to dump garbage and refuse at sea.

(pp. 42-52 of brief.)

Findings of Fact.

1. Plaintiff denies the allegation of the dumping of garbage at sea and its answer sets up no justification or other defense.

2. The record shows that the defendant does dump daily large quantities of garbage at sea off the shore of plaintiff. At the hearings defendant claimed that such dumping was practiced under authority of permits of the Supervisor of the Harbor of New York, an agent of the War Department of the United States.

3. Except for the claim of authority under such permits, defendant shows no statutory or other legal right to dump its garbage and refuse at sea.

4. The record shows no authority to dump garbage at sea under the provisions of an act of Congress, approved March 3, 1889; 30 Stat. 1152, which forbids the discharge or deposit of any refuse material of any kind or description in any navigable waters of the United States, without a permit from the Secretary of War.

5. The record discloses no authority conferred upon defendant by plaintiff, or by any other authority, to dump its garbage at the places used for that purpose.

6. The dumping grounds used by the defendant are within the territorial limits of the plaintiff.

7. There is no proof of specific permits issued by the Supervisor of the Harbor for any particular scow or for any particular period of time.

Conclusions of Law.

1. The act of Congress, approved June 29, 1888; 25 Stat. 209, as amended by act of Congress, approved May 8, 1928; 35 Stat. 426, under which permits are claimed to have been issued by the Supervisor of the Harbor of New York, confers upon said Supervisor no plenary power to authorize the dumping of garbage at sea.

2. Plenary authority for such purposes can be obtained only by virtue of authority from the states.

3. The sole interest of Congress and the Secretary of War is the protection of navigation and to keep free from obstruction or impediment the ship channels which the War Department dredges and maintains at great expense for that purpose.

4. The dumping of garbage by defendant is in violation of a statute of the defendant being Chapter 118, Laws of New Jersey for 1882, p. 155.

5. The dumping of garbage within the territorial limits of the plaintiff is unlawful because it is done without the affirmative authority of plaintiff or of the United States.

6. Defendant has no legal right to dump garbage and refuse at sea.

PART V.

(4)

Dumping of garbage and refuse at sea by defendant creates a public nuisance upon the property and within the territorial limits of plaintiff.

(pp. 52-265 of brief.)

Findings of Fact.

1. For many years, continuously at least from 1915, defendant has dumped at sea some or all of its street sweepings, consisting of rubbish and light stuff, in spite of the persistent efforts of the Supervisor of the Port of New York to secure the adoption of some more sanitary and satisfactory method of disposition.

2. For some years prior to 1917, defendant's garbage was disposed of by cremation at Barren Island and on Staten Island. In July, 1917, the Barren Island plant burned. In November, 1918, the operation of the Staten Island plant was discontinued.

3. There is no explanation in the record of why the Barren Island plant was not rebuilt or why the operation of the Staten Island plant was not resumed.

4. Nothing appears of record to show that if the Barren Island plant was rebuilt and the operation of the

Staten Island plant resumed, defendant could not, with appropriate enlargement of these plants as increased demand for capacity arose, continue to dispose of its garbage and refuse in the manner employed prior to 1917, without dumping any thereof at sea.

5. Permits of the Supervisor of the Harbor for the dumping of defendant's garbage at sea were originally requested by the defendant's officials as a temporary measure to continue for two or three months only.

6. In order to avoid obstruction of the main ship channel entering New York Harbor, the Supervisor of the Harbor of New York has by permit designated the location of the dumping grounds southeast by east of Scotland Lightship varying in distance from said lightship from 8 to 20 nautical miles according to seasons of the year.

7. From August, 1917, to the present time defendant has dumped at sea large quantities of garbage and refuse amounting in 1925 to 1,517,934 cubic yards; in 1926, 1,303,119 cubic yards; in 1927, 1,219,416 cubic yards; in 1928, 1,378,572 cubic yards, and in 1929, 1,478,165 cubic yards.

8. Dumping of garbage and refuse at sea by defendant is disapproved by the War Department and by the Supervisor of the Harbor of New York, both of whom have frequently urged and admonished defendant to discontinue that practice because of washing of the garbage and refuse on shore and of the objectionable transportation thereof through the harbor.

9. The consensus of expert opinion expressed in the official reports of defendant and by the witnesses in this case is that dumping at sea is a highly objectionable practice; that at no matter what distance from shore garbage is dumped at sea, a considerable portion of it is apt to

wash up on the beaches; that the least harmful material sinks and the foulest floats, which through the action of current and wind is inevitably scattered along the beaches thereby creating a public nuisance; and that such a method of garbage disposal should not be resorted to except in emergency and for periods of short duration.

10. Certain parts of this garbage sinks and in many instances injures and destroys fishing tackle, lobster pots, lines and other equipment lawfully in use by citizens of the plaintiff and inflicts upon them many thousands of dollars in damages. Such part of the garbage and refuse as floats, either on the surface or in suspension in the water, finds its way to shore according to the direction of wind and currents, and the wind exercises a greater influence than the current. If the wind is blowing from the west or southwest this garbage accumulates on the beaches of Long Island and other shores to the eastward and northeastward of the dumping grounds. If the wind comes from the east, northeast or southeast such floating garbage and refuse accumulates upon the shores of the plaintiff at various points, according to the direction of the wind, between Seabright and Beach Haven, in varying quantities and over varying areas, according to the direction and velocity of the wind.

11. The subject of defendant's dumping of garbage at sea and its accumulation upon the beaches and in the adjacent waters of plaintiff has caused many complaints to, and numerous negotiations and correspondence with, the Mayor, Commissioner of Street Cleaning, Corporation Counsel and other officers of defendant, by the Governor of the plaintiff, the officers of many of its municipalities, the Secretary of War, and the Supervisor of New York Harbor, covering a period of at least ten years. During all of which time representations have been made to defendant's officers showing the creation of a public nuisance by the dumping of its garbage at sea and during all of which time

defendant's officers have promised to provide complete incineration for its garbage and refuse at various dates from 1925 down to the present time. In spite of those promises the record shows that during the past three years the amount of garbage dumped at sea has continuously and substantially increased and that the amounts dumped at sea in 1929 was 21.2% in excess of that dumped at sea in 1927.

12. Plaintiff is justified in refusing to rely upon defendant's promises to build incinerators and cease dumping at sea.

13. The garbage interferes with the United States Coast Guard service by obstructing the beaches and requiring the removal thereof before the lifeboats can be launched, and that the coast guards are required to spend considerable time removing the garbage from their beaches.

14. The garbage dumped by the defendant at sea creates an impediment and obstruction to the navigation of fishing boats, pleasure craft, lifeboats, and other craft, both with respect to launching and landing of boats on the shore and the operation thereof in the sea adjacent thereto within the territorial limits of plaintiff.

15. Garbage dumped by the defendant in the sea interrupts and impedes the fishing operations of plaintiff's subjects and injures and destroys fishing equipment, such as nets, lobster pots and the appurtenant tackle and gear.

16. Numerous citizens of the plaintiff have constructed and operate, under license from the Fish and Game Commission of plaintiff, duly authorized thereunto by statute of the Legislature of the plaintiff, fish pounds in which they have invested thousands of dollars for the purpose of taking fish from the waters within the territorial limits of plaintiff immediately adjacent to its shore. It appears from the evidence that such pound fisheries are profitable

enterprises and constitute a legitimate and useful exercise of the powers of the plaintiff and the privilege of its licensee.

17. Large quantities of fish, having great value, are caught annually in these fish pounds.

18. The net by which said pound fish are caught, are torn and destroyed and suffer damage to the extent of thousands of dollars a year by reason of the garbage and refuse from defendant's garbage dumps, which drifts in the sea with the wind and current, by reason whereof the nets are torn and destroyed and the fish therein are released to the loss of the owners of the pounds. Such floating garbage and refuse is foul and offensive and its presence drives away from said pounds fish that would otherwise swim in the waters where they are located.

19. Vast quantities of such garbage and refuse are cast upon the shores of the plaintiff in piles or windrows extending along the beach for a distance of many miles and frequently to a depth in excess of one foot. Said garbage and refuse contains broken household furniture, barrels, crates, boxes, boards, sticks, wearing apparel, household utensils, all kinds of vegetables, fruits, meats, sanitary articles of the most offensive character, dead fowls, dogs, cats and other domestic animals, and even bodies of infants. Two hundred and sixty-four different kinds of articles were identified and described and a complete list thereof was submitted as appendix "A" to the brief. In many instances the individual articles were identified by markings or other indications thereon as having come from the defendant city.

20. A large proportion of the vegetable and animal matter in the garbage washed upon the beaches is in a decayed and putrid condition, is foul smelling and nasty, is offensive to sight and that vast swarms of flies feed and breed therein; that the offensive odors of said matter

causes annoyance, discomfort and nausea not only to persons upon the beaches but also to persons on the streets and other public places and in their homes. In cases of high tides said garbage and refuse is washed into the public streets and upon private property. It contains boards with nails, broken glass and other material which on many occasions has caused physical injury to persons and animals, on the beach and in the public highways. Said garbage and refuse and the flies which it breeds constitutes a serious menace to the health, as well as the comfort and convenience of the plaintiff's inhabitants, and deprives them of the use and enjoyment of public and private property for extended periods of time.

21. The accumulation of said garbage and refuse in the water on the beaches and other public places is of such frequent occurrence as to constitute a substantial continuous public nuisance.

22. The shore front in question extends for a distance of more than 50 miles from Seabright to Beach Haven, and includes twenty-nine municipalities of plaintiff having an aggregate resident population of over 160,000, and private property assessed for the year 1929 at $139,599,751.00, including hotels, boarding houses, private homes, places of business, etc. Said municipalities are seashore resorts inhabited and maintained for the benefit of, and frequented by, thousands of visitors during the summer season, solely on account of the attraction of the sea and the beach, for fishing, boating, bathing and other commercial and recreational purposes.

23. For the protection and improvement of the beaches and for the erection of boardwalks, pavilions, jetties, piers, pools and other bathing facilities, and other public improvements, designed and constructed solely for the benefit of the inhabitants and summer visitors, plaintiff and its municipalities and citizens have expended more than

fourteen million dollars. Other similar projects planned or in the course of construction represent an additional cost of approximately thirty million dollars.

24. Plaintiff's shore front in question constitutes one of the greatest natural advantages of the state. It is resorted to each year by many thousands of its citizens and by those of other states, for health, comfort and recreation in the enjoyment of the beaches and of the waters adjacent thereto for bathing, boating, fishing and other beneficial purposes.

25. The health, happiness and prosperity of vast numbers of plaintiff's inhabitants depend upon the commerce and pleasure derived from the use of said marginal sea and seashore and all of said pursuits including commercial fishing, pleasure boating, bathing and other uses of the water and shore, depend upon maintaining said waters and seashore free from the pollution and contamination which will interfere with such uses thereof.

27. It appears from the evidence that the contact of bathers with the garbage in the ocean has produced numerous diseases and infections of the ear and sinus such as furunculosi, exterior otitis and infections of the middle ear and reddening of the ear drums, which requires the ear drums to be opened, and numerous cases of infection of the skin.

28. Said garbage and refuse on the beaches and adjacent waters of plaintiff and the offensive appearance and odor thereof have produced nausea, discomfort and sickness.

29. Said accumulation of garbage and refuse on the shore and in the waters of the plaintiff creates an annoyance and inconvenience which materially interferes with

the ordinary comfort of the human existence and diminishes the value, comfort and enjoyment of the property of the plaintiff and its subjects.

30. The dumping of defendant's garbage at sea—

(a) Impedes and obstructs the free navigation of plaintiff's waters.

(b) Injures and obstructs the free and licensed fisheries of plaintiff's subjects.

(c) Hinders, and at times destroys, the public enjoyment of plaintiff's beaches.

(d) Pollutes the public waters, beaches, streets and other public places of plaintiff and its municipalities.

(e) Pollutes the atmosphere of the public places of plaintiff and its municipalities, and the homes of their inhabitants.

(f) Menaces the life and health of plaintiff's subjects.

(g) Retards the growth and economic development of plaintiff's territory and municipalities.

(h) Depreciates the value of the property and property rights of plaintiff and its subjects.

(i) Injures the general welfare of plaintiff's inhabitants.

(j) Imposes upon plaintiff's municipalities and inhabitants a constant and considerable expense in removing defendant's garbage and refuse from public and private property.

(k) Produces an intolerable annoyance and interference in the enjoyment of the health, comfort and property of plaintiff's inhabitants.

(l) Feeds and breeds vast swarms of flies which are a menace to life and health by reason of their annoyance and disease-carrying power.

31. The garbage and refuse of which plaintiff complains does not come from passing ships.

32. The garbage and refuse dumped into the sea by passing vessels is inconsequential and harmless and it does not contribute to the conditions of which plaintiff complains.

33. There is no proof of other scows dumping garbage or refuse off the coast of the plaintiff.

34. There is no competent proof that the Long Branch Sewer empties any sewage in the ocean.

35. There is no proof that any sewage discharged from the Long Branch Sewer Company's plant pollutes or tends to pollute the Atlantic Ocean.

36. There is no proof of any solids being discharged into the ocean from any outlet of the Long Branch Sewer system.

37. There is no proof of any nuisance being committed by the discharge into the ocean of the effluent of the sewers at Asbury Park or Long Branch.

38. It appears from the record that the complaints respecting Long Branch Sewer Company's system in September, 1926, have been met by plans submitted on that day to and approved by the State Board of Health of plaintiff. There is no proof that those plans have not been carried out to the satisfaction of the Department of Health of plaintiff.

39. There is no record of any complaints or of any criticisms of the sewer system by the State Department of Health or by any other official authority since that time.

40. Plaintiff is not bound by any statements contained in Exhibit No. 10.

41. The only evidence in the record of the discharge of any solids, or sewage effluent of a character such as to pollute or tend to pollute the waters of the Atlantic Ocean at Asbury Park is contained in defendant's Exhibit No. 11

which is a bill of complaint filed in the New Jersey Court of Chancery in an action by the State Department of Health against that city. The allegations of that complaint are denied by the answer of the City of Asbury Park, filed December 30, 1930. Whether those allegations are true or not are to be demonstrated at a hearing of the case on the merits.

42. The cause of action stated in defendant's Exhibit No. 11 arose after the hearings in this case had closed and therefore have no relevancy to the subject-matter of this suit.

43. The resolution (a) which is part of defendant's Exhibit No. 9 and defendant's Exhibit No. 11 shows that plaintiff is diligent in its efforts to prevent the pollution of waters and shore within its territorial limits.

44. A substantial part, if not all, of the garbage accumulation upon plaintiff's shore and in its waters is carried by wind or tide from the dumping grounds where the scows of defendant are emptied and defendant's dumping of garbage at sea causes a greater portion, if not all, of the nuisance complained of.

45. The accumulation of garbage and refuse in the waters and on the shore constitutes a public nuisance.

Conclusions of Law.

1. The primary uses of the sea are navigation and fisheries.

2. The right of fishery within one marine mile of the shore rests exclusively in the people of the adjacent state.

3. The free use of the ocean for navigation and fishing is common to all mankind.

4. The most valuable perequisite of the exclusive ownership of the marginal sea is the benefit of fisheries therein.

5. An obstruction to navigation is anything that causes an impediment rendering navigation less convenient, less secure or less expeditious and includes the deposit of debris in the water.

6 By the common law of England the right of property in the waters of the marginal sea are in the Crown, subject to the common right of navigation and fisheries, which is the common birthright of the people. The common law rule of sovereign proprietorship and public rights was adopted and is now in force within the territorial limits of the plaintiff.

7. The exclusive proprietary rights of the sovereign and the exclusive right of fishery of its subjects extend from the ordinary high-water mark on the shore to the extreme limit of the marginal sea. The common rights of navigation extend over all navigable waters. The common right of fishery which belongs to all mankind of all nations, extends to all parts of the high seas beyond the exterior limits of the marginal sea.

8. Plaintiff's citizens have an exclusive right of fishery in the waters within the territorial limits of plaintiff, and the right of unimpeded and unobstructed navigation not only on the waters within the plaintiff's territorial limits, but also on the high seas outside of those limits.

9. Bathing in the ocean is a public right which the plaintiff's inhabitants are entitled to enjoy without interruption or interference.

10. Plaintiff has a right to protect the rights of its citizens within its own territorial waters regardless of the power of Federal Government in the interest of navigation.

11. No measure of necessity, usefulness or public benefit will protect defendant from the condemnation of the law of a public nuisance. Defendant must find a way at

its peril. If it lacks legislative authority it must acquire it. If constitutional amendment are necessary it must obtain them.

12. Pure air and the comfortable enjoyment of property are as much rights belonging to it as the right of possession and occupancy.

13. Garbage dumped by defendant at sea, at whatever distance from plaintiff's shore, if carried thither by winds, tides or other natural agencies, constitutes a public nuisance in the same manner as if it were dumped directly upon the shore or immediately adjacent waters of the plaintiff.

14. The defendant having liberated the garbage in the sea is responsible for the results of the action of such natural agencies as wind and tide in carrying the same to the shores of plaintiff.

15. Municipalities situated upon or adjacent to the ocean have a legal right to discharge their sewage therein, so long as they do not commit a nuisance thereby.

16. The discharge of sewage by plaintiff's municipalities into the Atlantic Ocean is not a nuisance *per se.* The burden of proof to establish a nuisance therefrom is upon the defendant and no such proof was offered.

17. Contribution by others to the nuisance complained of neither justifies nor excuses the defendant.

18. Dumping of garbage and refuse at sea by defendant creates a public nuisance upon the property and within the territorial limits of plaintiff.

PART VI.

(5)

Dumping garbage and refuse at sea by defendant constitutes a trespass upon the property of plaintiff.

(pp. 265-271 of brief.)

Finding of Fact.

1. The dumping grounds used by defendant for the disposal of its garbage are within the territorial limits of the plaintiff.

Conclusions of Law.

1. The daily dumping of garbage by defendant within the territorial limits of the plaintiff constitutes a continuous trespass upon the property of plaintiff.

2. Dumping garbage and refuse at sea by defendant constitutes a trespass upon the property of the plaintiff.

3. Plaintiff is entitled to relief by injunction to restrain the continuance of said trespass.

PART VII.

(6)

Injunction is the only adequate and proper remedy in the premises.

(pp. 271-292 of brief.)

Findings of Fact.

1. The acts of defendant complained of continue from day to day and create a public nuisance which causes irreparable injury to the property and rights of the plaintiff and its citizens.

2. There is no adequate remedy of law in the premises, since a judgment in law would deal only with the past and would provide no remedy against the future recurrence of the nuisance. The situation involves a multiplicity of suits.

3. Many of the elements of damage such as odors, annoyance, unhealthful conditions, and deprivation of the use of the shore and waters are incapable of measurement by any monetary standard.

4. The acts of defendant complained of constitute a public nuisance upon the property of the plaintiff and its citizens which results in irreparable damage and injury.

5. An injunction should issue as a natural course, whether the injury is large or small.

Conclusions of Law.

1. The rule of prescription or laches have no application to a public nuisance. Each day's continuance is a new offense.

2. Plaintiff is more certainly entitled to expect relief than a private party might be, or as would be the case where the Court is asked to control the conduct of one State at the suit of another.

3. Injunction is the only adequate and proper remedy in the premises.

PART VIII.

Final Conclusion of Law.

Plaintiff is entitled to relief by injunction according to the prayer of the complaint.

Respectfully submitted,

WILLIAM A. STEVENS,
Attorney General.

DUANE E. MINARD,
Assistant Attorney General,
Solicitors of Plaintiff.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 18, Original

STATE OF NEW JERSEY, *Plaintiff*,

vs.

THE CITY OF NEW-YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER.

To the Supreme Court of the United States:

In the above entitle cause this Honorable Court appointed me as Special Master by its order dated October 14, 1929, as follows:

"And it is further ordered that the Honorable Edward K. Campbell be and he is hereby appointed Special Master in this cause with power to summon witnesses, issue subpoenas and to take such testimony as may be introduced and such as he may desire to call. The master is directed to make findings of fact and conclusions of law and to submit the same to this Court with all convenient speed, together with his recommendations for a decree. The findings, conclusions and recommendations of the master shall be subject to consideration, revision or approval by the Court."

The parties to the suit, by their respective counsel, appeared before me in Washington, in compliance with my request, in November, 1929, when a time was fixed for the taking of proof. Public hearings began at Asbury Park, New Jersey, on December 11, 1929, continuing for three

days. Another public hearing was held at Asbury Park on January 15, 16, and 17, 1930; and another at the same place on January 22, 23 and 24, 1930. At these hearings more than one hundred and fifty witnesses for the plaintiff were examined.

Public hearings were resumed in the City of New York on March 24, 1930, and continued through March 27, 1930. On April 8, 1930, a public hearing was had at Newark, New Jersey, when witnesses were examined.

Another public hearing was held at Washington, D. C., on December 5, 1930, and some additional proof was admitted without objection. At that time at the request of counsel and to afford time for preparation for argument and briefs the Special Master set February 4, 1931, as the date upon which arguments would be heard, and on the last named date counsel were heard in oral argument. The motion to amend the answer was then pending.

Except to call upon the defendant to file a statement from its records showing the quantities of garbage and refuse dumped at sea for each of the years 1925 to 1929, both inclusive, I did not deem it necessary to call other witnesses.

Now pursuant to the above-mentioned order I have reported the testimony and the exhibits received by me as Special Master, by filing the same in the office of the Clerk of this Court with my certificate, and I herewith submit to the Court my findings of fact, conclusions of law and recommendations.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1930.

No. 18, Original.

STATE OF NEW JERSEY, *Plaintiff*,
vs.
THE CITY OF NEW YORK, *Defendant*.

REPORT OF THE SPECIAL MASTER.

PLEADINGS.

The Bill.

The State of New Jersey exhibited its original bill in the Supreme Court of the United States against the City of New York, a municipal corporation under the laws of the State of New York, by which the State seeks an injunction restraining the City, its contractors and agents from dumping garbage or refuse into the waters of the Atlantic ocean off the coast of New Jersey and from defiling the waters and polluting the beaches of said State.

(1) The Court's jurisdiction is alleged to depend upon the ground that the suit is one in which a state is a party within the provisions of Article III, Section 2 of the Constitution of the United States.

(2) The Bill describing the location of the State as bordering on the Atlantic Ocean for more than one hundred miles alleges that the portion of ocean frontage more directly affected by the matters complained of extends from Atlantic Highlands to Beach Haven, a distance of approximately fifty miles, occupied by a continuous succession of municipalities which because of their beaches are adapted to, and their inhabitants are engaged in and rely for their livelihood chiefly upon, the business of maintaining sum-

mer resorts to which great numbers of people come in the pursuit of rest, recreation and pleasure.

(3) It is alleged that the plaintiff possesses the sovereign ownership of the lands along the shore and under the waters of the ocean below highwater mark throughout its beach front within its territorial limits and that the use of the said beaches and the adjacent waters are common to the people of the State.

(4) That said seashore is famous as a summer resort and has been greatly improved by piers, wharves, pavilions, bathing beaches and other conveniences for the health and recreation for citizens of the State and other people resorting to these places and that along the seashore and for some miles landward the territory is improved by hotels, pleasure resorts, country clubs, residences and large estates which are provided and maintained at great expense for the benefit of summer visitors and residents. That the waters of the ocean adjacent to the said shore and beaches are largely used for surf-bathing and for pleasure boating, for fishing and other purposes, and that many millions of dollars have been invested within the beach section in hotels, bathing pavilions, piers for landing and for pleasure, boardwalks, boulevards and facilities for pleasure and profit, and that several thousands of people are constantly employed to maintain and operate the same:

(5) That the section in question lies between the two great metropolitan areas of New York and Philadelphia and within easy access and communting distance by rail or motor vehicle of people within these areas; that many persons commute daily between the seashore and their places of business, and the seashore is visited by many thousands of visitors and excursionists during summer months and over holidays and week ends.

(6) That the growth, prosperity and substantial property values of the seashore communities in question are the result of enterprises dependent upon the population and the suitability of said waters, beaches and shore front fa-

cilities for fishing, boating, bathing and other seashore recreations and pursuits, and that the continuance of these agencies depends primarily upon the ability of the State or its citizens and municipalities to keep the waters wholesome and the beaches and sea front property free from pollution, contamination, and unsightly and unhealthful conditions.

(7) That along the beach section in question are located many fish pounds, constructed under licenses granted by the State or one of its departments and maintained by its citizens who have made investments in the fishing business of large sums of money; that the production of these fish pounds in one year amounts to approximately 20,000,006 pounds of fish, having a value of nearly a million dollars, and that the industry gives employment to approximately 500 men.

(8) It is alleged that the defendant, with a population exceeding 6,000,000 of people and increasing annually, disposes of garbage and other refuse by transporting the same in barges towed out and dumped into the navigable waters of the United States off the complainant's coast and that many barge loads are so disposed of daily and may constantly increase. The Bill specifies a number of articles and things composing the garbage and refuse, much of which, it is averred, is in a putrid and decayed condition. It is alleged that a considerable proportion of said garbage and refuse floats upon and beneath the surface of the sea in masses or islands which obstruct and impede fishing boats and other craft until it is driven by the wind and tide upon the said beaches and cast thereon by waves in heaps and windrows and under or about the piers, wharves, adjacent boulevards and private property, where it decays and pollutes the sea and land unless and until removed and disposed of by the municipality or citizens. That this removal or disposition from the beaches and places affecte equires large expenditures by the municipality and ther large sums by citizens of the State. (73)

That said garbage or refuse in the water and cast upon the beaches and property of complianant and its citizens is poisonous and otherwise injurious to human beings and to the fish and other forms of marine life; that it impedes the open navigation of the Waters of the United States clogs, tears and injures the net of the fish pounds, and renders the waters noxious, offensive and unfit for fishing, boating or bathing, and that the dumping of garbage and refuse by the defendant creates a public nuisance which seriously impairs the usefulness, wholesomeness and safety of said waters, beaches and short-front facilities and of the property of the plaintiff, of the municipalities and its citizens, and thereby greatly damages the property, seriously menaces the health and safety of the plaintiff and its citizens; that said acts are and will be repeated and continued from day to day, and that the plaintiff is without adequate remedy at law.

(9) It is further averred that the acts complained of—

(a) Take the property of complainant and its citizens without due process of law in violation of Article XIV, Section 1 of the Constitution;

(b) Regulate and destroy the commerce of the plaintiff and its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution;

(c) Deprive plaintiff and its citizens of the natural advantages of their property along the seashore contrary to its sovereign rights as a member of the Union, and,

(d) It violates Title 33, Chapter IX, Section 407 of the United States Code and other laws of the United States and that said acts are otherwise detrimental to the interests of the plaintiff and its citizens.

ANSWER.

The answer of the City of New York, except in its admission of the averments as to its own population, was substantially a general denial of the allegations of the Bill.

Issue was joined upon this answer.

After the testimony was concluded and the day had been fixed for argument before the Master, the defendant on, to wit, February 2, 1931, filed its motion in this Court for leave to file its amended answer. This motion was allowed by the Court on February 24, 1931, by an order reading as follows:

"The motion of the defendant for leave to file an amended answer and to withdraw the answer heretofore filed in this cause is granted; provided that the plaintiff's reply to the original answer may, if desired, be deemed the reply to the amended answer and that all proceedings heretofore taken herein shall stand and shall be regarded as having been taken as if the amended answer had been originally filed and without reopening the evidence."

AMENDED ANSWER.

The answer denies many of the avertments of the bill, and not admitting others sets forth "for a first defense":

(1) That the defendant has for many years last past dumped the garbage and some refuse collected by it in the Atlantic Ocean, under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said Supervisor under the authority conferred on him by the Act of June 29, 1888 (25 Stat. 209), as amended, and now Title 33, Secs. 441, 443, 449 and 451 of the U. S. Code) "at points eight, twelve, and twenty miles southeast of Scotland Light Ship and about ten, twelve and a half and twenty-two miles distant respectively from New Jersey shore (being greatly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States; that in view of the dumping of said garbage and said refuse on the high seas by the said City of New York in the manner and at the points aforesaid this Court has no authority to enjoin the said city, the defendant herein, from said dumping of garbage or refuse so performed."

(2) And further answering and "for a seond defense" the defendant alleges: "6. That garbage and refuse in large quantities," including various materials set forth in the answer, "has for many years last past been and are being dumped into the Atlantic Ocean from steamships and other floating equipment, both inside and outside of the entrance to New York harbor and into the sea lanes for vessels clearing for ports south of New York and returning therefrom at distances from two-and a half to eight miles from the shore of New Jersey, from Highlands to Barnegat Lighthouse," and that great quantities of condemned food stuffs are and have been for many years dumped at sea at a point about twenty-five miles southeast of Scotland Lightship, and that private contractors have, for many year last past, dumped, under permits issued by the Supervisor of the Harbor of New York under said statute, into the Atlantic ocean at points from three to eight miles southeast of Scotland Lightship, "excavated and refuse materials from demolished buildings in the City of New York, which materials often contain large quantities of refuse, and other things mentioned; and that such private contractors and the United States Navy Yard have for many years been dumping garbage into said ocean either at points from eight to twenty miles distant from said Scotland Lightship or nearer thereto under such permits issued by the Supervisor of the Harbor of New York; and further that insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park for a number of years last past has been and is being discharged into the Atlantic ocean at short distances from the beaches of each of those cities; and that all of the garbage, refuse and sewage and offensive matter is the same kind and character as that dumped by the City of New York at points eight to twenty miles southeast of Scotland Lightship and from ten to twenty-two miles from New Jersey shores. That "such garbage, refuse, sewage and other offensive matter discharged as aforesaid by private contractors, by

the United States Navy Yard authorities and by said New Jersey cities into the water of the Atlantic ocean in large quantities would float under the influence of the tide and wind into the water and on to the beaches of the State of New Jersey and its municipalities claimed to be polluted in this action" and "it is impossible to determine whether garbage or offensive materials in substantial quantity dumped by the City of New York is deposited in the waters of New Jersey and on its beaches or in greater quantities than that deposited in the sea by other agencies than the City of New York; and that if any injuries or damages are suffered by New Jersey or its citizens or to their health, safety or property it is not chargeable to the acts of the defendant: and

(3) "For a third defense the defendant alleges that the bill of complaint does not state facts sufficient to constitute a cause of action or to entitle the plaintiff to any relief."

PARTIES AND JURISDICTION.

This is an original action brought by the State of New Jersey under authority of a resolution of its Legislature, approved April 16, 1929, by direction of the Governor of the State.

The defendant is the City of New York, a domestic municipal corporation, created by and existing under the laws of the State of New York.

The case presents a justiciable controversy over which this Court has jurisdiction. (Art. III, Sec. 2, Const. of the U. S.) (*Georgia* v. *Tennessee Copper Company*, 206 U. S. 230; *Missouri* v. *Illinois*, 180 U. S. 208; 200 U. S. 496. *New York* v. *New Jersey*, 256 U. S. 296; *Wisconsin* v. *Illinois*, 278 U. S. 367, 418).

FINDINGS OF FACT.

The facts deemed to be established by the evidence and which may be considered material to the contentions of the

parties relative to the locality and area affected, summer resorts and beaches, fishing and boating; garbage conditions and effects thereof on the beaches, and their removal, effect on surf bathing and the frequency of garbage deposits and cause thereof; also some history of the dumping by defendant of garbage and refuse, at sea, and reports by the Supervisor of the Harbor of New York, the quantities of garbage or refuse dumped, their movements, also relative to complaints of conditions caused by the deposits, and to matters alleged by defendant in defense; and some other matters hereafter noted are as follows:

GENERAL STATEMENT.

(1) Locality.

The State of New Jersey on its easterly side borders on the Atlantic Ocean for a distance of about one hundred miles. A reduced copy of a map in evidence, showing the geographical location, is made an exhibit to the bill.

(2) Area Affected.

(a) The part of the State affected more directly by the matters complained of is that portion of the ocean frontage extending from a point at or near Atlantic Highlands southward to Beach Haven, a distance of approximately fifty miles and inward from the shore at various distances. Within this fifty miles of ocean frontage there are twenty-nine separate municipalities of the State.

(b) The State of New Jersey, as the proprietary owner of the seashore, has at different times conveyed to these several municipalities, and in some instances by lease or otherwise, to individuals designated, portions of the frontage under water. No material changes have occurred since 1928 and in that year the ownership of the frontage under water along the said fifty miles of coast line was as follows:

The State owns approximately 285,000 lineal feet be-

tween Sea Bright and Beach Haven; the municipalities, approximately 13,000 lineal feet, and private parties approximately 64,000 lineal feet.

The aggregate resident population of these municipalities exceeds 160,000. Their summer visitors exceed this number many times over. For instance, Allenhurst, a residential place, has a winter population of 1,000, and a summer population of 3,000. Bayhead has a winter population of 300 and a summer population of some 6,000 or 8,000; Bradley Beach (winter), 5000, (summer), 30,000 to 40,000; Ocean Grove (winter), 4,000, (summer), 35,000 to 40,000. The figures given are approximated. Other municipalities show about the same general ratio between their winter and summer populations.

The assessed value of property within said 29 municipalities for state tax purposes for the year 1929, including hotels, boarding houses, private houses and places of business, exceeded $139,000,000.

(3) Summer Resorts.

These municipalities are seashore resorts, inhabited and maintained as such for the benefit of residents and visitors. Many thousands of visitors frequent them during the summer season solely on account of the benefits and the attractions of the sea and the beach for fishing, boating, bathing and other recreational purposes. There are visitors to some of them at other seasons of the year than the summer who go there for the benefits afforded by the ocean and air.

(4) Beaches.

(a) The beaches along said frontage afford natural advantages for seashore resorts and from an early date have been well and favorably known and patronized as such. To these natural advantages have been added many

improvements for their protection and improvement, in the erection of jetties and piers, board walks and pavilions, pools and bathing facilities, ocean front casinos, and amusement facilities designed and constructed for the use and enjoyment of residents and visitors. Upon these the State and the municipalities and citizens have expended more than $14,000,000. Other projects already planned call for additional large expenditures of money. These beaches are within easy access of people residing in the metropolitan areas of New York and Philadelphia, and conveniences of travel to them are supplied by railroads, good roads, motor cars and busses. They are accordingly visited by people from these areas in great numbers as well as by people from other parts of the United States and from abroad and from all parts of New Jersey. A record kept of the number of people brought by excursions run by two railroads entering Asbury Park, during a period of years shows that in 1924 there were more than 256,000, and in 1929 more than 160,000. Its resident population is about 20,000.

The inhabitants of these municipalities depend for their livelihood chiefly upon the business of maintaining summer resorts. The ocean, with its uses and suitableness for bathng, for fishing and boating is the chief attraction which they can offer visitors. People congregate at them in numbers in the pursuit of rest, recreation, health and pleasure. Clean beaches are of the utmost importance to the comfort of visitors and the prosperity of residents at these resorts.

A large number of photographs were introduced and filed as exhibits, showing the crowded condition of beaches by people assembled there to take part in or witness the bathing and enjoy the beaches and ocean.

There are many private homes in the several towns and boroughs. In many of these the owners reside during the summer and commute to their places of business in New York, Philadelphia or some place in New Jersey.

(5) Fishing.

(a) The statutes of New Jersey provide for a license to be issued by its Board of Fish and Game Commissioners upon due application therefor for the taking of fish by means of fish pound nets, and make it unlawful to erect and maintan fish pound nets in any of the waters of the Atlantic Ocean "within three nautical miles from the coast line" without first having procured such license (N. J. P. L. 1919, page 214). Numerous citizens have constructed and operated such "fish pounds" under licenses within the prescribed area adjacent to the shore and have invested many thousands of dollars in the business of taking fish. The conduct or operation of these fish pounds and the handling of the catch gives employment to approximately 500 persons.

The fish pound nets are extended from a point about a quarter of mile from shore outward for a distance of approximately 1500 feet, in water from twenty to thirty-five feet deep, are supported by poles driven in the bottom, the pounds or traps being at the outer end. When fish feeding along the coast come in contact with the net, which serves as a wier, they turn toward deeper water, following the net and the contraption is such that the fish are thus led into the trap from which they cannot extricate themselves and from which they are taken.

More than one hundred of these fish pounds are located at divers places off the coast of plaintiff and large quantities of fish are taken annually and sold from them. The value of the fish pounds in 1928 was approximately $700,000. The fish caught amounted to approximately 25,000,000 pounds and sold for approximately $950,000. Less fish were taken in 1928 than in 1924, 1925 or 1926, but more in 1928 than in 1927.

(b) Fishing as a sport is engaged in by many persons using boats or the piers or the shore from which to cast their lines and furnishes an attractive feature of these resorts.

(6) Bathing.

(a) One of the most favored uses of said ocean front is the surf bathing. Visitors and residents are attracted by the same and when the water is not unsuitable use and enjoy surf bathing in great numbers. The continued attractiveness of the resorts depends on the water along the shore being wholesome and suitable for the purposes of summer resorts and the beaches free from pollution and unsightly or unhealthful conditions.

(7) Garbage.

Vast quantities of garbage and refuse are stranded on the beaches in question, cast thereon from and by the waters of the ocean and extending in piles and windrows along the same. The general constituents of these deposits of garbage and refuse are:

(1) Garbage of all kinds, including vegetables, such as cabbage, kale, potatoes, onions, peppers, greens, tomatoes, turnips, and other kinds; and fruits, such as oranges and grapefruit and the skins and parts of either; and melon rinds, banana skins, apples and other kinds, besides bread and pieces of meat large and small and remnants from the kitchen; and many of these when cast upon the beach are in advanced stages of decay and rottenness.

(2) Intermixed with the foregoing is frequently found a soft and grease-like matter that settles on the beach and renders passage thereon extremely disagreeable because it adheres to the feet and is odorous.

(3) Large numbers of electric light bulbs and pieces thereof; glass bottles, whole or broken.

(4) Dead dogs, dead cats and dead fowls.

(5) Pieces of wood; crates and parts of crates, bundles of paper; broken furniture; rags, cans and rubbish.

The foregoing is not an enumeration of all of the different things found in the deposits. There were introduced in evidence a great variety of things that had been found at different times upon the beaches amongst the general mass of deposits. The number of these things exceed 250 kinds. Included in these and bearing the names and addresses of business houses and concerns in New York City are such things as billheads, business cards and letterheads; paper cartons and labels, bulletins and cancelled checks; hundreds of sale slips and order and charge slips; large bundle of letters to a New York City concern; a number of "examination papers" in a college in New York City; innumerable milk bottle caps with names thereon of one or another dealer in New York City; laundry tickets, theatre tickets, restaurant tickets and menu cards; papers in large bundles; crates and paper boxes, all containing New York City addresses. A bundle of 46 letters, postmarked City of New York, dated in December, all addressed to one family in New York City.

This conglomeration is spread over and upon the beaches from high-water mark to low-water mark, littering the entire beach, and while at different beaches there frequently appears a variety such as more of the wooden things, driftwood and so forth, the general mass appears at all of the beaches affected by the particular deposit. The deposits extend long distances along the shores, sometimes in unbroken lengths of more than twenty miles and at other times is limited to the length of three or four or more of the beach fronts. At times the mass does not stop at high-water mark but is cast by the force of the waves under the boardwalks and into the street beyond. Frequently the depth of the mass exceeds one foot.

When the garbage and refuse are cast upon the beaches they must be speedily removed, especially in summer. The conglomeration of things spoken of and referred to give off offensive odors and when subjected to the sun's rays in-

crease in offensiveness and foul smelling that reach away from the shore to the streets and into the homes of the people. Swarms of flies appear on the mass and feed there. The offensive odors from these deposits cause annoyance and discomfort and nausea. They are unsightly on the beaches. Large proportions of the animal and vegetable matter forming a part of the conglomeration and being in the putrid or decaying condition must be disposed of hurriedly and are buried. Other parts are hauled away. At times it requires fifty or more truck loads to remove one deposit from a single beach. The grease-like matter is removed by rakes. The deposits of garbage and refuse pollute the beaches and produce unhealthful conditions, interfering with and frequently preventing the comfortable and enjoyable use of the beaches and the sea. It is dangerous to leave children unattended on the beach while the deposits are there because of things they may pick up; some of the things found being unmentionable. Broken glass and nails in pieces of wood have been the cause of severe wounds to persons on the beach or in bathing. The appearance and condition of the conglomeration is aptly described by witnesses as "nasty" and "filthy." It is a menace to health and tends to injure business and property values. It injures rental values. They have been made the subject of many complaints as hereafter stated.

During June, July and August, 1929, there were in Asbury Park a considerable increase over the preceding year of cases of external otitis which is a swelling or inflamation of the ear canal and of cases of infection of the middle ear, requiring the drum to be opened, and of sinus affected cases, resulting from bathing in the ocean.

Pure sea water has a high chlorine content and is quite antiseptic. Infection is contrary to the natural conditions of sea water. One or more of the Coast Guard incurred a skin infection from the water which gave them considerable trouble.

(8) Removal and Expense.

Each deposit of garbage and refuse imposes upon the municipalities affected the expense incident to its removal. Men are regularly employed to perform that duty. The cost of cleaning the beaches following such deposits at Bayhead amounted, in 1929, to $3,000; at Belmar, $2,000; at Bradley Beach, for 1928 and 1929, it exceeded $2,500; at Deal, from $1,000 to $1,500 per year; at Allenhurst, $1,000 per year; at Ocean Grove an average of approximately $275 in four years; at Seaside Park, $600 per year; at Seaside Heights, $500 per year; at Spring Lake, $300 per storm, and in 1929, $700 as the expense of one removal; and various sums at the other places, some in excess of those stated.

(9) Water and Fish Nets.

When the garbage and refuse have been cast upon the shores, as stated, it generally occurs that the water along the shore line continues to hold in suspension large quantities of the same kind of material which renders bathing therein undesirable and impracticable until the water and its undertow can carry these things away. The objectionable materials can be seen in the water and furnish the basis for many complaints by visitors and others. Usually the sea clears along the shore in a few days and at times, in a day after, the deposit on the beach.

When the garbage or refuse is cast upon the beaches it frequently occurs that fish pound nets in the vicinity of such beaches are torn by garbage or refuse in the water thrown against them and in addition to the damage so resulting they become fouled and difficult to handle. The repair of them from the effects of the garbage and refuse costs many thousands of dollars, which must be borne by the owners. The presence of garbage and refuse in the water in the vicinity of the nets injuriously affect the business of fishing by such nets.

(10) Occur, When.

The deposits of garbage and refuse on the beaches occur when the winds are from the east or northeast. A storm or severe blow from either of these directions does and will bring the garbage, and a wind of from twenty to thirty miles an hour does also bring it to and upon the shore; as also does an east or northeast wind of two or three days duration. Sometimes the garbage and refuse are brought in by southeast winds. The heavier deposits occur on some of the beaches four or five times a season, and occur frequently throughout the year, varying in number with the different beaches.

There is no conflict in the testimony as to the foregoing general statement. The sections thereof, numbered respectively, (1) to (10), both inclusive, are made a part of my findings of fact.

(11) Dumping.

Nor is there any dispute as to the fact of the disposal by the City of New York of garbage, street sweepings and rubbish by dumping the same at sea. The defendant admits it does now and has for years since the fall of 1918, dumped these things in the ocean. It produced a statement from its records showing that it has dumped into the ocean during the last six years an average of more than a million and a third cubic yards per year; that the last year, 1929, was above that average and exceeded the amount dumped in either of the three preceding years. Reduced to tons, the disposal by dumping in the ocean during 1929 was approximately 493,000 tons. In the winter months there are less materials dumped than in the summer months. In February 1929 there were 52,000 cubic yards dumped, and in June of that year 192,000 cubic yards. These dumpings are made every day except when the weather conditions prevent. The foregoing section numbered (11), title "Dumping" is made a part of my findings of fact.

(To avoid repetition of statement I also make a part of these findings of fact, the following sections, entitled: History of Dumping, Complaints, Supervisor's Reports, Quantities, Appearance and movement, and Incinerators, numbered, respectively, from 12 to 17 inclusive.)

(12) History of Dumping.

For about twenty years prior to 1918, the City of New York disposed of its garbage and street sweepings by what is known as the "reduction system" and except for a brief period during 1906 did not dispose of these things at sea. Some necessary repairs or alterations in the reduction plant in 1906 made it necessary to dispose of these materials otherwise for a short period, and during that period they went to sea. The by-products from the "reduction system" were disposed of.

In 1918 the reduction plant at Barren Island having been destroyed by fire, occurring in 1917 and the contractor operating the one at Staten Island having failed, the city was confronted with the situation that it had no method for the disposal of its garbage and waste, and accordingly applied to the Supervisor of the Harbor of New York for permission to dispose of these materials at sea. This Supervisor of the Harbor is an officer provided for by the Act of Congress of June 29, 1888 (25 Stat. 209), entitled an "Act to prevent obstructive and injurious deposits within the Harbor and adjacent waters of New York by dumping or otherwise and to punish and prevent such offenses". This Act and some amendments thereto are made Sec. 441 *et seq.* of the U. S. Code, 44 Stat. 1072.

Under date of August 8, 1918, Dr. R. S. Copeland, then Health Commissioner of New York, addressed a communication to the Supervisor of the Harbor stating the very serious situation confronting the city because of garbage and said:

"The only present method we have of getting rid of garbage is to dump it at sea. . . . In order to pro-

tect the health of the citizens of this city it is absolutely essential to get rid of the garbage and without delay. I trust this will meet with your approval. But I want you to understand that we do not contemplate any permanent use of so inadequate a system. It is simply a temporary expedient to bridge over an emergency."

A similar request for permission went to the Supervisor of the Harbor from the Commissioner of Street Cleaning of the city. Because of the conditions thus outlined the Supervisor of the Harbor gave permission for the dumping of garbage at sea and prescribed an area southeast of Scotland Light Ship in which it should be dumped.

Later still, complaints having reached his office from the New Jersey coasts the Supervisor designated three dumping areas, located respectively at distances of eight, twelve and twenty miles southeast of Scotland Light; the eight mile area to be used during the winter months; the twelve mile area in the early spring and late fall months, and the twenty mile area in the summer and later spring and early fall months. The shorter distances were allowed in the seasons mentioned because of the unseaworthiness of the scows in the service in the heavy seas usually prevailing during such seasons of the year and the time consumed in towing them to the dumping places and return in rough weather. The dumping areas are approximately ten, twelve and a half and twenty-two miles, respectively from the shore of New Jersey.

The practice of dumping the materials at sea, begun as an emergency, has continued, but its character as an emergency authorization does not appear to have been altered.

The materials to be dumped are loaded upon scows at designated city docks from wagons and trucks collecting them in the city. These scows are towed by tugs in tows of two or three scows to the area of disposal. Accompanying each of the tug boats is a "dumping inspector" from the office of the Supervisor of the Harbor whose duty it is to see that the dumping is done within the prescribed areas.

He is required to report on each occasion directly to said office the facts as to the scows and the place of the dumping.

(13) Complaints.

I find that complaints have been made and summarize the facts as follows:

Complaints of the condition of the beaches and adjacent waters produced by the deposit of garbage or refuse thereon have been made frequently for years by visitors to the different resorts, by residents of the municipalities and by municipal authorities, and by organizations of citizens having as a purpose the correction of these conditions. Such complaints in different forms and the conditions giving rise to them have been frequently brought to the attention of the defendant, its Mayor and other agents.

In December, 1918, a few months after the dumping at sea began defendant's Mayor, requested the Supervisor of the Harbor that he authorize a change in the dumping places so as to shorten the distance to be traveled by the scows. The Supervisor declined this request, and in his letter to the Mayor called attention to conditions produced on the New Jersey shores during the year 1906, when for a short period the defendant had been authorized to dump its garbage at sea, and stated that in view of this experience he should not be called upon to "jeopardize the health of residents and the sanitary condition of the beaches along Long Island and New Jersey coasts by any modification of the conditions as to the disposition of such offensive materials as are present in operation". And he added: "As I have already stated to you in my previous communication, the deposit of this material at the mouth of the harbor is most objectionable from every point of view."

In the report hereafter mentioned, submitted to the Mayor of New York, June 1, 1921, the Committee appointed by him to report on the question of disposal of waste by the City, said amongst other things:

"Aside, however, from the question of cost it seems undesirable to dump garbage at sea as it is being done at

the present. It is known that the federal authorities quietly resent if they do not openly object to it, and there is always the possibility of objection from other communities which have in the past claimed that they have been injured by the practice."

In June, 1923, the Mayor of Asbury Park complained to the Mayor of New York of the condition. The reports of the Supervisor of the Harbor in evidence, show that repeatedly since 1920 the question of alternative plans for garbage disposal has been discussed with the city. The defendant's Commissioner of Street Cleaning department and its Corporation Counsel attended a meeting in 1923 of representatives of the organizations already mentioned as formed for the purpose of stopping the pollution of the beaches and stated in effect that the dumping would soon stop.

The several Governors of New Jersey from 1922 to 1929 have been active and earnest in bringing the beach conditions arising from garbage cast thereon to the attention of the Mayor of New York, and have appealed to the Secretary of War for relief. The Secretary of War has directed the Supervisor of the Harbor to bring these conditions to the attention of the City and has urged on the Mayor the "importance of early completion" of the plans for incinerators.

These beach conditions with promises to seek remedies against their continuance have been the subject of platform declaration by one or both of the two major political parties in New Jersey from 1922 to 1929.

Governor Sulzer in 1924 and 1926, Governor Moore in 1927 and Governor Larsen in 1929 discussed the same subject in their annual messages.

It has been the subject of joint resolutions by the legislature in 1927 and 1928 and 1929.

The City of New York, through its Mayor and other responsible agencies, has been informed of these beach conditions and their injurious effect together with the desire

of the people of New Jersey that they cease, and this information has been repeatedly given said city.

(14) Supervisor's Reports.

The Reports of the Supervisor of the Harbor of New York, included in the annual report of the Chief of Engineers for the years 1918 to 1929, inclusive, mention the fact that the defendant's garbage is being disposed of at sea. The report for 1918 states that because of the destruction of the plant at Barren Island "it was necessary to dispose of this objectionable material at sea," and that the point designated for its disposal was fifteen miles southeast of Scotland Light.

In 1919 the report stated that "the practice of disposing of garbage at sea has continued." In 1920 the report states: "About two years ago at the request of the New York City Commissioner of Street Cleaning and the urgent solicitation of the Commissioner of Health the Supervisor authorized the disposal of city garbage at sea as a temporary measure to continue for two or three months only. The practice still continues and there is no prospect of an immediate change." The substance of this statement appears in the reports for the subsequent years.

In a letter dated September 10, 1925, from the Secretary of War, in response to one from the Governor of New Jersey complaining of garbage conditions on the shores of the State, the Secretary disclaimed that any authority to dump garbage emanated from his office but stated that permission had been granted by the Supervisor of the Harbor in New York.

The disposal of its garbage at sea has continued except that in February, 1924, there was put in operation by the City of New York a 300-ton "incinerating" plant, the first plant after the cessation of the "reduction system." In November, 1925, another incinerating plant was put in operation, and since then additional incinerating plants have been put in operation.

(15) Quantities.

The amount of garbage and refuse dumped in 1924 was approximately 1,675,000 cubic yards; and in that year one incinerating plant was in operation. In 1925 the amount was approximately 1,500,000 cubic yards, a second incinerating plant going into operation in November of that year. In 1926 the amount was approximately 1,300,000 cubic yards; in 1927, 1,200,000 cubic yards and in 1928 an increase over the last figure; while in 1929 the amount rose to 1,478,165 cubic yards, though there were in operation nineteen incinerating plants. The amount in tons is obtained by dividing the cubic yards by three. It therefore appears that during 1929 there were 492,721 tons dumped; an average of more than 40,000 tons per month.

The dumping goes on each day except when the weather prevents taking the scows to sea, which latter increases the amount that must be dumped when the scows can go to sea. The daily average exceeds 1,000 tons per day. The daily average over the year's operation does not reflect the conditions as they are because less garbage is dumped in winter than in summer. Thus in February, 1929, there were dumped about 52,000 cubic yards, something over 17,000 tons; while in June of that year there were dumped approximately 192,000 cubic yards, or 64,000 tons; a daily average of more than 2,000 tons.

(16) Appearance and Movement.

When the dumping areas is reached, the side gates of the scow are opened upon signal from the tugs, and the contents slide to the water. These are intermixtures of garbage, street sweepings and rubbish. When they slide from the scow, large portions sink, but other large portions float on the surface or are held in suspension by the water. The facts confirm the statement made by a Commission appointed by the Mayor of New York in June, 1907, hereto-

fore mentioned, that "unfortunately the less harmful material sinks and the foulest floats." These floating and the suspended materials spread in a mass extending at times six or more miles in length, of varying widths, and interspersed with lanes or "slicks," the latter so-called because of grease particles on the surface. Such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement. The mass moves at times westward and northward or towards the shores of New Jersey or Long Island, according to the direction and velocity of the wind.

The plaintiff caused an investigation to be made at the dumping places in the summer of 1929, of the conditions there when the scows discharged their contents. The persons making these investigations made more than thirty different trips to the dumping places, and on at least fourteen of them were close by when the scows dumped their contents, and they observed the same.

The defendant sent to the dumping areas on three occasions in February and March, 1930, persons to examine and report upon conditions. The Supervisor of the Harbor sent an agent to these areas to investigate the floating garbage in February, March and April of 1929, and this agent made six trips. They all concur in the general conclusion, and I find it to be a fact that the mass spreads out on the surface of the water, gradually breaking up into smaller areas and moving for indefinite periods with the wind, some of the materials being on the surface and some in suspension. The Supervisor's agent, instructed to follow the floating mass for 24 hours, found on one occasion that the garbage went about fourteen miles in twelve hours, the drift being towards the Narrows; on another occasion the drift being westward under a variable east wind from three to thirty-five miles, went seventeen miles in 24 hours, and was about six miles off the New Jersey shore when he left.

A large number of fishermen whose business is lobster fishing, taking them for miles out from the shore, were examined as witnesses. Many of these men go out every day and have followed their avocation for many years. They have frequently seen the dumping and the masses of floating garbage that followed. Their boats pass through or around such masses as they go or come. The mass is so thick at times that boats cannot go through it. They have seen these floating areas of garbage and refuse at various points between the dumping places and the New Jersey shore, and some have followed it from the dumping place to where it went ashore.

Members of the Coast Guard from different stations on the New Jersey shore have frequently seen floating areas of garbage and refuse near the shore and at some distances from the shore, the area varying in size from several acres to narrow strips. Parts or areas of these masses of garbage or refuse in suspension appear frequently, and are seen at short distances off shore, by persons on the shore, and some are encountered by persons in pleasure boats or fishing boats at divers places off shore.

While the parties sent to the dumping places by plaintiff were there, a photographer among them took a number of photographs showing the conditions of the garbage on the water, which were introduced in evidence. A number of the fishermen identified conditions which they had witnessed as being similar to those shown by some of these exhibits. The parties sent out as stated by plaintiff cast into the mass on several occasions a large number of sealed bottles containing self-addressed and stamped cards, with the request that any finder return them by mail. About twenty-five per cent of these cards came back to the parties by mail from persons along the New Jersey shore and Long Island shore, and some from farther north.

During fourteen times these persons went out in May, June and July of 1929, they made a list of things seen in the water after the scows were dumped. This list contains

the identical kinds of materials that are heretofore stated to constitute the deposits on shore: fruits and fruit skins; vegetables, electric light bulbs, papers and rags, wooden boxes, crating, pasteboard boxes, dead animals and many other things. The mass falling from the scows forms piles a foot clear of water. Gradually displacement takes place, and the heavier stuffs, finding their way through the floating mass, sink.

The odors arising from the mass are offensive and nauseating. The Supervisor of the Harbor of New York, in his report to the Chief of Engineers in 1918, said: "Garbage deposited at sea, no matter what the distance from shore, is apt to wash up on the beaches." In each of his subsequent reports it is said in substance: "Experience indicates that garbage at sea at no matter what distance is liable to wash up on the beaches."

I find that large parts of these floating and submerged areas of garbage and refuse, dumped by the defendant, are driven are carried by winds and water to and upon the shores of the plaintiff, and constitute the objectionable materials thereon and in the adjacent water, hereinbefore described, and that the winds in such cases come from the east or the northeast, and sometimes from the southeast, as has been heretofore found.

(17) Incinerators.

As hereinbefore stated, the method of garbage disposal in use by defendant prior to October, 1918, was what was known as the "Reduction System," by which the by-products were conserved. It began the disposal of garbage and refuse at sea in October, 1918, and has continued the same. In the meantime, however, it has built a number of incinerators as will later appear.

In 1920, a Committee was appointed by the Mayor of New York to report upon the subject of "Collection and Disposal of City Waste." This committee was composed of the heads of departments and officials, including the

Health Commissioner of the State, who had requested permission for the disposal by the city of its garbage at sea, as hereinbefore stated. The report to the defendant's Mayor, dated June 1, 1921, was introduced in evidence. Asserting that "There is perhaps no more important or difficult task confronting any municipality than this one of waste removal," the Report made estimates based upon the data before the committee that in the Boroughs of Manhattan, the Bronx, and Brooklyn alone, the Street Cleaning Department in 1920 disposed of about ten million cubic yards of "ashes, rubbish, street sweepings, garbage and dead animals," or approximately 270,000 tons of rubbish, 440,000 tons of garbage and 300,000 tons of street sweepings." And further estimated that the number of dead animals, aside from "large animals" amounted in 1920 to 217,600 small animals, such as sheep, calves, hogs, cats and dogs.

As to the method of disposal of garbage they reported: "The greatest objection to the present system of disposing of waste materials is in connection with the method now being used for getting rid of garbage, which is both unsanitary and uneconomical. For some years the disposal of garbage not only did not cost the city anything, but as a matter of fact returned a small yearly profit. . . . Aside, however, from the question of cost it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent, if they do not openly object to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal."

The Committee made no final recommendation for the disposition of garbage, as to the method of incineration or reduction, pending further investigation.

Long prior to the foregoing report, which was made June 1, 1921, a report had been made by a Commission consisting of distinguished consulting engineers, appointed by Mayor McClellan of New York which reported to him on December 31, 1907, upon the question of street cleaning and waste disposal. This report is known as the Parsons, Henry and Whinnery Report. This Committee reported adversely to dumping garbage and refuse at sea, among other things saying: "All of the refuse collections could be dumped into the Atlantic ocean, but unfortunately the least harmful material sinks and the foulest floats, so that much of the floatable mass will be scattered along beaches through the action of current and wind. This fouling of beaches creates a nuisance that the public should not be asked to tolerate."

Mr. Samuel A. Greeley, an hydraulic and sanitary engineer of recognized experience and ability, with practical knowledge of the methods of the disposal of garbage, condemned the method of disposing of garbage and refuse at sea for very much the same reasons given by the Committee above mentioned in their report of 1921. He gave as his opinion that either incineration or the "Reduction System" is good.

Considerable portions of its garbage and refuse collected by the defendant has been and is being disposed of by incinerators constructed by the defendant. The first of these was put in operation in 1924, some five years after the dumping at sea began. In December, 1929, the defendant had in operation three incinerators in the Borough of Manhattan, none in the Bronx, nine in Queens, five in Brooklyn and three in Richmond.

The Department of Sanitation in New York City is a newly created one under the law and went into effect on December 1, 1929. It took over the jurisdiction formerly exercised by the Department of Street Cleaning and some other agencies of the City. On December 23, 1929, the new Department of Sanitation presented to the Mayor of the City a program for increasing the number of incinerators

in the five boroughs as follows: Five 500-ton plants in Manhattan; four 500-ton plants in the Bronx; five 500-ton plants in Queens and five 500-ton plants in Brooklyn, and the reconstruction of two plants in Richmond.

The City now has the power of condemnation, which it did not have prior to 1929. It does not appear what if any action has been taken by the Mayor or city authorities upon the program presented by the new Department of Sanitation.

The evidence does not show the cause of the apparent delay by the defendant in adopting and putting into operation the incinerating system. It was in 1924, some five years after the defendant began dumping at sea that its first incinerator was put into operation, and during the next succeeding five years others were built. Those constructed and in use fall far short of taking care of the garbage and refuse situation. A reason offered for the delay is that the City did not have the power of condemnation and could not override objections in localities to the operation of incinerators therein. This power was acquired in 1929 and there is no evidence explaining why it was not acquired sooner.

I conclude that the method of disposing of garbage and refuse by dumping the same at sea is not an approved or a good system and that disposition of such material by incineration or the "Reduction system" is a proper way to dispose of the same. I further conclude that the delay of defendant in adopting a proper method of disposal has been unreasonably long.

SOME ISSUES OF FACT.

The defendant contends, however, that the garbage and refuse on the beaches result from the disposals, first by steamships, and second, by scows of private contractors and by some others to be named.

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(1) Steamships: It is to be observed that the lanes for European and foreign vessels to and from New York pass to the north and east of the designated dumping areas; that is to say, these dumping areas are between the lanes and the shores.

(a) There is evidence that some coastwise and other vessels discharge garbage or refuse into the ocean. Vessels out of New York go southward or come from southern ports to New York, passing the New Jersey coast at a distance of from three to eight miles and their general routes lie between the dumping places of the City and the shores.

The evidence as to the number of such vessels is that produced by the defendant to the effect that in December, 1928 and January of 1929 there were 1227 vessels entering the Port of New York from southern ports, and during July and August of 1929 the number was 1892. That the number clearing from New York for southern ports in December, 1928 and January, 1929, was 1173; and in July and August, 1929 was 1192. Whether freight or passenger vessels, or the relative number of each does not appear, but if it be assumed that the vessels in and out of New York for the four months mentioned represent a fair average of the number for each month of the year and that the average per day is the same for the different years the result would show that approximately thirty entered from southern ports and twenty departed from New York for southern ports each day, the difference in number in those coming in and those going out being accounted for by the fact that some entering New York from southern ports clear therefrom for other than southern ports.

A witness introduced by the defendant, being one of the three sent out by the defendant to examine the conditions at the dumping places, and a pilot of experience, made an estimate to the effect that there were twenty vessels a day going and coming from southern ports to New York.

The direction of the vessels, whether going to or clearing from New York affects the amount and kind of material

they discharge. Thus vessels coming from southern ports discharge their garbage and refuse about as fast as it is produced, or shortly after leaving their last port of call, except vessels coming from nearby places, such as Philadelphia to New York, which are supposed to discharge their garbage and refuse after leaving Delaware breakwater and there is no reason to assume that the vessels from southern ports allow these things to accumulate until they arrive off the New Jersey coast.

(b) On the other hand the vessels in New York harbor which provide for their crews while in port and which do not provide for the disposal of garbage and refuse while in port (as some vessels and lines do arrange) have to get rid of the same after getting out of the harbor. The sweepings from the cargo, the cleanings from the ships, including dunnage and such crates and boxes as may have accumulated and other materials are piled upon the deck together with garbage preparatory to casting the same overboard after the vessels have gotten under way. There is evidence that some of the vessels and a majority of the lines operating out of New York southward do not accumulate garbage or other refuse matter but make arrangements for its disposal while in port. Crews of some vessels are maintained on board and crews of others are not maintained while in port. There is evidence that some vessels southbound begin the disposition of their accumulated garbage, refuse and rubbish soon after leaving the point southwest of Scotland Light and continue to discharge as they proceed. There is an estimated amount by two or three witnesses for the defendant, being the same witnesses who went out to make the investigation at the dumping areas for the defendant, that forty to fifty tons are discharged from some of these vessels leaving New York. The amount of the garbage that is intermixed with the other materials is not stated or estimated.

(c) In 1924 owing to complaints to his office of garbage reaching the shore, the Supervisor of the Harbor sent re-

quests to all shipping companies that their vessels refrain from discharging garbage within twenty-five miles of Ambrose Lightship, and received from many of them assurance of their cooperation.

(d) There is evidence by one of the witnesses already mentioned for the defendant that vessels, sometimes as many as fifty, coming to New York, are held by fog or heavy seas at anchor off the lightship for a day or two, and while there throw overboard their accumulated garbage and refuse material.

There is testimony by a special agent of the defendant's department of sanitation, giving the location of various docks of scows of private contractors in the borough of Manhattan, and that on several occasions in March, 1930, he visited some of these dumps and saw wagons and trucks dumping into these scows a variety of materials; and two other witnesses testified to similar conditions.

There is no evidence that any garbage or refuse from these places is dumped at sea. There is no evidence that scows receiving the materials mentioned by the three witnesses in March, 1930, dumped the same at sea, or where they disposed of it.

On the other hand there is testimony from officers of ships operating along the coast that a few bushels of garbage is cast overboard from vessels coming out of New York and largely taken up by gulls; and some members of the Coast Guard testified that they have seen ships cast off garbage in small quantities, these expressing the opinion that the quantities are too small to account for the areas floating or in suspension in the water.

(e) There is evidence that a foreign steamship was seen to discharge garbage on an occasion in or near the waters of New York Harbor, and a photograph of the vessel on that occasion was made an exhibit.

(f) There is evidence that a witness had taken on his vessel a cargo of condemned onions and discharged the

same at sea twenty-five miles southeast of Scotland Lightship.

(g) There is evidence that permits had been issued by the Supervisor of the Harbor to five different concerns to dump mud off shore at points designated as three mile limit southeast of Scotland Lightship, and to three others to dump "cellar dirt" at the four mile limit; and to several to dump "cellar dirt intermixed with rock" at the six mile limit. These concerns dumped the materials mentioned at the various places. Some other materials are permitted to be dumped at the eight mile limit.

(h) From time to time and infrequently cargoes of foodstuffs, vegetables and fruits, condemned by the Board of Health authorities, are disposed of at sea by outbound vessels under permits, the amounts being relatively small. Such deposits are beyond the area used by the defendant. A system of patrol boats and of inspection is maintained by the Supervisor of the Harbor to prevent depositing materials at other than the stated areas.

(i) Scows from the Brooklyn Navy Yard dump materials at the dumping areas used by the defendant, their contents being generally rubbish and refuse with a small amount of garbage.

(j) Another source alleged by the defendant in its amended answer "for a Second defense" is that insufficiently treated and unsanitary sewage from the City of Long Branch and of Asbury Park has been for a number of years discharged into the ocean at short distances from each of these cities.

As to the Long Branch sewer, the evidence consists of a plan of the sewage system and some evidence that complaints were at one time made to the Department of Health which investigated the same; and that the matters were satisfactorily adjusted.

As to Asbury Park sewage, there is evidence that in March, 1930, witnesses for the defendant made an examination of that system and at the outlet of the sewer about

1,000 feet off shore found emerging from the sewer outlet fecal, and vegetable matter and fruit peelings. This phase was explained in rebuttal by the Superintendent of the Water and Sewers in that city, who described the system used, that the sewage collected by the regular intercepting system and no fecal matter goes out. He explained that about once a year, and in winter as a convenient time, there is an opening of the "blow-off gates to relieve the sludge tank of its load", and having properly cleaned and washed the tank, the valve is again closed, and that during the period of this operation materials may go into the outlet that cannot go there when the valve is closed; that this kind of cleaning process was in operation on March 19th, 1930, the date of said visits by said witnesses.

Defendant also introduced a bill of complaint exhibited by the Department of Health of New Jersey against Asbury Park in Chancery in New Jersey, praying an injunction restraining that city from discharging into the ocean inadequately treated sewage from the "municipal sewage treatment works", which discharge, it is alleged, is due to insufficient capacity and design of said works. These works were constructed in 1909. This bill was filed in the summer of 1930, under a proceeding authorized by the statutes of New Jersey.

I have set forth in perhaps unnecessary detail some of the evidence offered by the defendant and have done so (1) to show the latitude extended in adducing proof when much of it under the general denials of the original answer would in strictness be inadmissible. It was generally heard without objection. And (2) to show something of the indefiniteness of the testimony itself.

Manifestly the proof offered by the defendant leaves much to surmise and speculation. Testimony that some vessels discharged garbage and refuse after clearing from New York falls short of establishing a custom by other vessels. Proof that employes of the defendant saw garbage and refuse dumped into scows of private contractors

in March, 1930, has small probative force towards establishing what occurred in 1929 and prior years.

There is proof that some vessels discharge garbage and refuse and that scows with permits to dump cellar dirt frequently have with it pieces of wood in more or less quantities, besides other proof referred to.

Giving to the evidence due consideration, I think it should be concluded that whatever garbage and refuse reaches the plaintiff's shores from coastwise and other vessels and other causes, and other dumpings than those of the defendant, are negligible in comparison with that constantly being dumped by the defendant, and frequently carried by winds and waves from the dumping places to and upon plaintiff's shores, as hereinbefore stated.

SOME QUESTIONS OF LAW.

Some questions of law arising between the parties are as follows:

1. The plaintiff's contention that defendant dumps its garbage in water over soil belonging to plaintiff, that is to say, in the waters of its marginal sea.

2. Effect of permits issued by the Supervisor of the Harbor of New York to defendant.

3. The question of nuisance.

4. Prescription.

5. Degree of proof.

6. Jurisdiction.

1. Trespass.

The plaintiff contends that the dumping of garbage by defendant is upon its property and therefore constitutes trespass.

As the farthest place of the dumping is more than twenty miles from the New Jersey shore, the claim that the "marginal sea" of the State extends to and beyond that point is at least interesting. It is, of course, true that within its territorial limits property rights are to be measured by the rules and decisions of the courts of the State, and that these will be followed by this Court (*St. Anthony Falls Co.* v. *Board*, 168 U. S. 349, 362; *Baum* v. *Keohm*, 94 U. S. 324, 338; *Rundell* v. *D. & R. Canal*, 20 Howard 80 and 93). But the plaintiff insists that the limit of its marginal sea is not to be measured from the low water line on its shore but from a line drawn between two headlands projecting the one at Montauk Point, New York, and the other at Cape May, New Jersey, and seeks to apply the rule of the common law for determining whether the head or arm of the sea was within the jurisdiction of a given county or outside of it and therefore under the jurisdiction of the sovereign alone.

This method for determining the county's jurisdiction was that the distance between the *terrae fauces* should be no greater than to render it possible for a person to discern with the naked eye what was being done on the opposite shore. Plaintiff arnges that in this country "we thus determine the jurisdiction of states rather than of counties".

This Court said in *Manchester* v. *Massachusetts* (139 U. S. 240, 263), that "there is no indication that the customary law of England in regard to the boundaries of counties was adopted by the Constitution of the United States as a means of determining jurisdiction of states." The Court was there considering a contention that the jurisdiction of the State as between it and the United Sates should be confined to the border of the counties and that the counties should be defined according to the customary English usage, by the application of the rule as to headlands. This Court said (page 264): "The extent of the territorial jurisdiction of Massachusetts over the sea

adjacent to its coasts is that of an independent nation and except in so far as any right of control over this territory has been granted to the United States this control remains with the state."

In *Martin* v. *Waddell* (16 Pet. 307, 410), language from which is applicable to New Jersey, this Court said: "For when the Revolution took place the people of each state became themselves sovereign and in that character hold the absolute right to all their navigable waters and the shores to them for their own common use, subject only to the right since surrendered by the Constitution to the general Government." To the same effect see *Illinois Central Railroad Company* v. *Illinois* (146 U. S. 387).

At the time the plaintiff became a state, succeeding to the rights of English sovereign, the common law rule was that the territorial limit extended "only to such distance as is capable of command from the shore of the range of a cannon, which for the purposes of certainty is regarded as one marine league, although for the purposes of self-protection in times of war and for the prevention of fraud upon its revenues each nation is accustomed to exercise authority beyond this limit. (Gould on Waters, 3; Angell on Tidewaters, 2.)

In *Manchester* v. *Massachusetts, supra,* this Court said (p. 258): "We think it must be regarded as established that as between nations the minimum limit of territorial jurisdiction of a nation over tide water is a marine league from its coast; that bays wholly within its territory, not exceeding two marine leagues in width at the mouth are without this limit, and that included in this territorial jurisdiction is the right of control over fisheries. . . . The open sea within this limit is, of course, subject to common law rights of navigation and the government for the purpose of self-protection in times of war or for the protection from fraud on its revenues, exercises authority beyond this limit."

In *Cunard Steamship Company* v. *Mellon* (262 U. S. 100, 122), this Court said: "It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land area under its dominion and control, the ports, harbors, bays and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league or three geographical miles."

The view of Chancellor Kent (1 Kent Com. 30) and of other writers on international law cited by complainant, that our Government could reasonably assume the control over waters of our coast "though included within lines stretching from quite distant headlands", as for instance from Nantucket to Montauk Point, and from that point to capes of Delaware, and from Florida to the Mississippi River, do not serve to increase the territorial limits of a state. The headlands mentioned are not the "*terrae fauces*" of the common law, which involved points within the territory of one sovereign. The assertion by the general Government of power conferred by the States does not operate to increase the territorial limits of a State. The treaty making power and that of providing for the common defense, as well as the power applicable to commerce and navigation admit of the assertion of claims by the United States no longer open to the several States. (*United States* v. *Rauscher*, 119 U. S. 407, 418; *Gibbons* v. *Ogden*, 9 Wheat. 1; *Maiorano* v. *Baltimore Road*, 213 U. S. 268, 272.)

As a practical expression by the Federal Government on this question there may be mentioned the comparatively recent treaty with Great Britain relative to infractions of the Prohibition Laws and fixing a limit, sometimes called the "Twelve Mile Limit", Article I of which provides:

> "The High Contracting Parties declare that it is their firm intention to uphold the principle that three marine miles extending from the coast line outwards

and measured from low water mark constitutes the proper limit of territorial waters". (See *Foro* v. *United States*, 273 U. S. 593, 607.)

The State of New Jersey succeeded to rights of the English crown. (See *Martin* v. *Waddell, supra,* citing *Arnold* v. *Munday,* 6 N. J. L. 1).

In its first constitution, adopted July 2, 1776, Art. XXII, it is provided: "That the common law of England as well as so much of the statute laws as have been heretofore practiced in this colony shall still remain in force until they shall be altered by future law of the legislature". (1 Comp. Stat. XXXII).

And in its present constitution, it is provided that the common law and statute law "now in force" and not repugnant to the constitution shall remain in force until altered or repealed. (I Comp. Stat. XLVII).

The Statute of New Jersey defining the boundary of counties provides (109 Sec. I), the "territorial limits of each county of this State fronting upon the sea coast be and the same are hereby extended to a line parallel with the ocean shore line of said counties and extend easterly three nautical miles therefrom and the division lines between said counties as they now exist be and the same hereby are extended from the several points where they now reach the sea in course due east until they severally reach said outer line of said counties as hereby established." (2 Comp. Stat., p. 1703, Public Laws of 1906, p. 542).

Reference has already been made to the Act requiring licenses for pound net fishing. Another Act (2 Comp. Stat., Sec. 123, p. 252) makes it unlawful for any person to take with "purse or shirred nets" certain fish in any county within the jurisdiction of this State, including a county on the Atlantic ocean within three nautical miles of the coast line."

In *Gough* v. *Bell* (22 N. J. L. 411, 455), it is said: "This title, which by the common law of England is vested in the King, upon the Revolution became vested in the people of

the State. . . . In this State the rule of the common law as to the limit of its rights remains unaltered."

I think the established rule of the common law should be accepted in determining the territorial limits of New Jersey in the soil under water and that its claim that the dumping of garbage is upon its property is not sustained.

As before stated, large areas of garbage and refuse floating upon or held in suspension by the water, which have been dumped by defendant's scows, are driven and carried by wind and water to and upon the shores of plaintiff and other portions or areas thereof are held for indefinite periods in the waters above soil owned by plaintiff and do great injury to fishing and bathing in such waters.

2. Permits.

In its amended answer the defendant alleges "for a first defense" that it has, for many years last past dumped the garbage and some refuse collected by it in the Atlantic ocean, under the supervision of the Supervisor of the Harbor of New York and in accordance with and only after the issuance of permits by said Supervisor under the authority conferred on him by the Act of June 29, 1888" (29 Stat. 209, as amended; Secs. 441, 443, 449 and 451 U. S. Code) "at points eight, twelve and twenty miles southeast of Scotland Light and about ten, twelve and a half and twenty-two miles distant, respectively, from the New Jersey shore (being clearly in excess of one marine league from said shore) and not within the navigable waters of said State of New Jersey or of the United States" and adds that "such dumping occurring at these points this Court has no authority to enjoin said City . . . from said dumping of garbage and refuse."

The plaintiff insists that there is no evidence of any permits.

It is a fact that no written permit was introduced in evidence but this is not to say that there is no evidence of permis.

A witness introduced by defendant and afterwards by the plaintiff in rebuttal was Captain Anderson, detailed under the provisions of the Act of June 29, 1888, to perform the duties of Supervisor of the Harbor of New York. Captain Anderson, having made a general statement relative to the duties of his office under the Act was asked:

"Q. Permits have been issued by your office to the city of New York to dispose of garbage and refuse material at sea?

"A. They have.

"Q. Will you explain for our information as well as for the record just how these permits are issued, the procedure so that we may understand for the first time how that is done?

"A. In issuing these permits we have dealt directly with the old department of street cleaning, which is now a division of the Department of Sanitation. They have to apply on a printed form for permission to move and dispose of whatever class of material they may have. We have certain dumping grounds that are customarily used and if their request meets the approval of the office the permission is granted and the permit is issued. This permit is good for only a limited number of days.

"Q. And as the barges and tows proceed to sea under permit is there some representative of your office stationed in the upper and lower Bay to inspect or collect this permit?

"A. On these two boats, towing loads of that description we have an inspector, called a dumping inspector, whose job it is to see that the dumping does not take place short of the designated dumping ground.) Also we have on duty patrol boats from my office which are customarily stationed in the vicinity of the Narrows and around Sandy Hook and a little outside and these boats inspect outward and inbound tows and make appropriate notation upon their permit, which they collect." The statute contemplates that they will be collected.

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This witness further explained that the officers on the patrol boats noted the time of passing and returning by the tows and these notations "are subsequently checked up in my office to see whether the lapsed time would permit them to go to designated dumping ground."

This officer had testified, as stated, without objection, that permits were issued to the defendant. In addition, the plaintiff has shown by repeated statements in the reports of the Supervisor made a part of the annual reports of the Chief of Engineers for the years 1918 to 1929, inclusive, introduced in evidence, that the Supervisor had given permission to the defendant to dispose of garbage and refuse at designated places, and had also shown by the letter of the Secretary of War to the Governor of the State that the "permission" was given by the Supervisor of the Harbor and not by the office of the Secretary of War to dump the garbage in an "emergency"; and further by the Supervisor's statement to the Mayor of the City when the latter requested a change in the designated area.

In addition to these it affirmatively appears in evidence not only that this officer designated the place where the dumping could be done but there went from his office with each tug towing the scows a "deputy inspector" to see to it that the dumping actually took place at the designated places. The established fact is that the defendant had the Supervisor's authority to dump the materials, whatever that authority may amount to, and would seem to make unnecessary the production of one or all of the "permits", which in the ordinary practice of the Supervisor's office, would amount, in ten or twelve years, to probably a thousand or more. I find as a fact that the dumping was by permission of the Supervisor of the Harbor.

The Act of 1888 (U. S. Code, Secs. 441 *et seq.* 44 Stat. 1072) was entitled "An Act to prevent obstructive and injurious deposits within the Harbor and adjacent waters of New York City by dumping or otherwise and to punish and prevent such offenses."

This Act, amended in 1898 (U. S. Code, Sec. 443), provided that a line officer of the Navy shall be designated by the President as Supervisor of the Harbor "to Act under the direction of the Secretary of War in enforcing" its provisions. Depositing of certain kinds of materials in the tidal waters of New York or its adjacent tributaries or in those of Long Island Sound "within the limit which shall be prescribed by the Supervisor of the Harbor" are strictly forbidden. One section provided for a permit defining the precise limits within which the discharge of the scows may be made.

Material parts of the Act of 1888, and the amendment of 1898, are as follows: Sections 441 and 453 U. S. Code—

> Title 33. Secs. 441. *Deposit of refuse in New York Harbor and adjacent waters prohibited; penalty.*—The placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by a fine or imprisonment, or both, such fine to be not less than $250 nor more than $2,500, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor. (June 29, 1888, c. 496, 1, 25 Stat. 209.)
>
> Sec. 443. *Permit for dumping; penalty for taking or towing boat or scow without permit.*—In all cases

of receiving on board of any scows or boats such forbidden matter or substance as described in section 441 of this chapter, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed, as provided in section 451 of this chapter, a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $1,000 nor less than $500, and in addition thereto the master of any tug or towboat so offending shall have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. (May 28, 1908, c. 212, 8, 35 Stat. 426.)

In *United States* v. *Sadie* (41 Fed. 396) Judge Lacombe speaking of this Act of 1888 says (p. 398): "The bodies of water referred to are (a) the Harbor of New York; (b) waters adjacent to the Harbor of New York; (c) waters tributary to the Harbor of New York; (d) Long Island Sound, and as to each of these bodies of water there is a restriction of application of the Act to such waters only as are tidal."

In the present inquiry only the first two of these descriptions can apply: the Harbor and waters adjacent to the Harbor of New York.

The Act contemplated that the Supervisor prescribe certain limits but there is no evidence in this case as to what limits were prescribed. In *City* v. *Leland* (45 Fed. 380, 381), there is reference to certain prescribed limits.

A construction of the Act of 1888, as amended, becomes important. The defendant relies upon the "permit" or

the permission granted by the Supervisor of the Harbor; who has no authority other than that which the Act confers. It may be noted in this connection that this Act is not affected by the Rivers and Harbors Act of March 3, 1899 (U. S. Code, Title 33, Section 407). The latter is a general Act and as was observed by Judge Thatcher in "The Albania" (30 Fed. (2) 727) Sec. 441, *et seq.* of the Code (the Act of 1888) is a special Act applied to New York Harbor and vicinity and it may be repeated in this connection that the Secretary of War in a communication to the Governor of New Jersey stated that the dumping by New York City was through permission of the Supervisor of the Harbor and not by the Secretary. But the purport of the Act of 1888, as was that of the general Rivers and Harbors Act of 1899, is referable to the power of Congress to legislate for the protection of navigation.

There can be no doubt that the dumping was not within the limits of Harbor of New York, as these limits are spoken of in *United States* v. *Newark Meadows Improvement Company* (173 Fed. 426, 428) as being "within a line from Navesink Lighthouse to Scotland Light thence to Whistling Buoy in Gedneny's Channel and thence to Rockaway Point prescribed by the Secretary of the Treasury as the limits of the waters of the Harbor of New York," pursuant to the Act of February 2, 1895 (28 Stat. 672). It was done at eight, twelve and twenty miles, according to the season of the year, southeast by east from Scotland Light, one of the points in the foregoing description.

In *United States* v. *Various Tugs and Scows* (225 Fed. 505), where it appeared that permits had been issued, it was said by Judge Hand (p. 507): "It seems to me that a permit to dump no less than four miles east by southeast of Scotland Light Ship excludes by implication dumping within New York Harbor and its adjacent and tributary waters inside of that point and thus defines the precise limit." He added that even though the limits prescribed by the Supervisor are beyond a marine league from the shore any other interpretation of the national power would

render the Government impotent to protect the harbor and adjacent channel and waters. In order to sustain a conviction under the Act it was held in *Werner Quinlan* v. *United States* (273 Fed. 503), to be necessary for the evidence to show that the Supervisor had prescribed such limits and that the defendant had placed such materials within such limits.

If the limits of the adjacent waters be taken as prescribed by the designation of the places by which dumping was allowable *(U. S.* v. *Various Tugs and Scows, supra)*, it is manifest from the distance given that the limits are in excess of "one marine league from said shore" to use the words of the amended answer; but it is difficult to understand how this fact affords any defense in this case. If the defendant did not dump the materials nearer than the designated areas the Supervisor's permission would afford protection against penalties of the Act. But can it be said that these permits serve as a defense against the claim of others whose rights have been invaded?

The purpose of the Act is to protect navigation with reference to New York harbor. The authority of the Federal Government does not extend beyond the requirements of navigation. *(Wisconsin* v. *Illinois,* 278 U. S. 367-415.)

In *Cummings* v. *Chicago* (188 U. S 410, 431), it was said with reference to Section 10 of the Rivers and Harbors Act of 1899, that its effect "reasonably interpreted is to make the erection of a structure in a navigable river within the limits of a state depend upon the concurrent and joint assent of both national government and the state government. . . . . Without such assent the structure can not be erected by them." *(United States* v. *Bellingham Bay Boom Company,* 176 U. S. 211.)

In *Port of Seattle* v. *Oregon and Washington Road Company* (255 U. S. 55, 63), it is said: "The right of the use of the navigable waters within the several states is limited to the control thereof for purpose of navigation."

And in *United States* v. *River Range Improvement Company* (269 U. S. 411, 419), this Court says: "While Con-

gress in the exercise of this power may adopt, in its judgment, any means having some positive relation to the control of navigation and not otherwise inconsistent with the Constitution of the United States *(United States* v. *Chandler-Dunbar Company,* 229 U. S. 62), it may not arbitrarily destroy or impair the rights of riparian owners by legislation which has no relation or substantial relation to the control of navigation or appropriate to that end." (See *Wisconsin* v. *Illinois,* 278 U. S. 367, 415.)

The authority conferred by the Act of 1888 upon the Supervisor was not as general as that found in the Rivers and Harbors Act, nor was it an arbitrary power. So far as the defendant's acts are concerned his authority was only permissive. The title of the original Act (that of 1888) shows its purpose was to protect the Harbor of New York. When the powers of the Supervisor are limited to that purpose they do not purport to extend to a general authorization to regulate the dumping of garbage outside of the waters specified in the Act.

The powers which the Supervisor has under the Statute and the effect to be given the permits authorized to be issued are to be strictly construed, because of the effect of the dumping upon the rights of others. "The doctrine is firmly established that only that which is granted in clear and explicit terms passes by a grant of property franchises or privileges in which the government or the public has an interest. . . . Whatever is not unequivocably granted is withheld; nothing passes by mere implication." *(Coosa Mining Co.* v. *So. Carolina,* 144 U. S. 550, 562; *Fertilizer Co.* v. *Hyde Park,* 97 U. S. 659, 666.)

In order to accord to the act full scope as a shield for protection, it is not necessary to make of it also a sword of offense.

Nor does the fact that the defendant is a municipal corporation afford immunity from the results of its own action. It was said by the *Massachusetts Court in Haskell* v. *New Bedford* (108 Mass. 208, 214): "The owner of any lands bordering upon the sea may lawfully throw refuse

matters into it provided he does not create a nuisance to others. But it by no means follows that either the city or any private person has the right to deposit filth upon the seashore in such quantities as to create a nuisance to health or navigation. (See *Brayton* v. *Fall River*, 113 Mass. 218, 230). This case quotes and approves *Franklyn Wharf* v. *Portland* (57 Me. 446, 457), to the effect that "The right of defendant to construct an outfall for their sewer in the sea does not include the right to create a nuisance, public or private."

In *Noonan* v. *City of Albany* (79 N. Y. 476, cited in *Huffmire* v. *Brooklyn*, 162 N. Y. 584, 590), it is said: "A municipal corporation has no greater right than an individual to collect the surface water from the land or streets into artificial channels and discharge it upon the lands of another, nor has it any immunity from legal responsibility for creating or maintaining a nuisance."

In *Block* v. *Maryland* (149 Md. 39), the city was enjoined from the commission of a nuisance notwithstanding it claimed that it was authorized by statute to make a contract and that in the performance of that contract a nuisance was created.

My conclusion is that the Act of 1888, as amended, furnishes no defense to the defendant, and that compliance with permits from the Supervisor of the Harbor acting under the provisions of that Act does not furnish a defense nor relieve it from the effect of a public nuisance resulting from or created by its action.

3. Nuisance.

There is no doubt (the amended answer admits) that the defendant for years past, at least since October, 1918, has been dumping large quantities of garbage and refuse at sea, and principally in places designated by the Supervisor of the Harbor of New York. I use the word "principally" because there is evidence that sometimes through accident or the occurring of something unusual, a few scows have dumped their loads nearer to the shore than the appointed

places. There is also evidence uncontradicted, and I find the fact to be that some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area. The general practice continues, more materials were dumped in 1929 than in the preceding year.

As already stated, the conditions on the plaintiff's shores and adjacent waters produced by garbage and other objectionable materials alleged in the bill are proved by uncontradicted evidence. A summary of the facts found may be stated as follows: Along the shores are many summer resorts which serve to furnish recreation, pleasure and rest to people. Their beaches when unaffected by the bad conditions mentioned are pleasure grounds for thousands of visitors. A large number of people living in and doing business in these municipalities are dependent for their livelihood upon the resorts and the preservation of their recreational advantages. The summer resorts along these shores constitute one of the plaintiff's most valuable industries and they suffer frequently in annoyance and expense from deposits of the materials mentioned. The expense of the removal of garbage and other materials falls upon these municipalities and individuals, and this expense amounts annually to large sums. Their disposition as soon as can be after being cast upon the shore is imperative. Foul smelling and repellent as they generally are when first stranded, they become more so as soon as they are subjected to the rays of the sun. They attract swarms of flies. The odors create nausea, and sometimes reach into homes. The deposits interfere with, and until removed frequently prevent, the use and enjoyment of the beaches for the purposes to which the latter are adapted and for the comfortable and enjoyable use of which people visit them. They cause many complaints from the disappointments to visitors to the several resorts for recreation and health, as well as from those whose business depends upon

the attendance of visitors. Many visitors leave the resorts because they cannot use the beaches when littered or secure the surf bathing when the waters adjacent hold garbage and refuse in suspension. The shores below high water mark and the soil under the adjacent waters for at least three nautical miles belong to plaintiff, and their chief value is in the fisheries and the fact that they can and do afford the attractions pertaining to summer resorts which fisheries and attractions are seriously interfered with by the deposits in question.

Along with and at times of the deposits there frequently come broken bottles and pieces of glass and wood pieces with nails therein, and the broken glass and nails are a menace to the bathers in the surf and to persons on the beaches. Severe bodily injuries have resulted from them. The rental value of property has been impaired because of the deposits. The decayed and decaying vegetables and animal matters cast upon the shore is offensive to a high degree to sight and to smell. The deposits are frequent and recurrent.

In *Cleveland* v. *Citizens Gas Light Company* (20 N. J. Eq. 201, 204), it is said: "Any business, however lawful, which causes annoyances that materially interfere with the ordinary comforts of human existence is a nuisance which should be restrained, and small noises and bad odors, even when not injurious to health, may render a dwelling so uncomfortable as to drive from it anyone not compelled by poverty to remain. Unpleasant odors from the very constitution of our nature render us uncomfortable, and when continued or repeated make life uncomfortable. To live comfortably is the chief and most reasonable object of men in acquiring property as the means of attaining it, and any interference with our neighbor in the comfortable enjoyment of life is a wrong which the law will redress."

In *Northwestern Fertilizer* v. *Hyde Park, et al.* (97 U. S. 659), this Court considered a case coming from the Supreme Court of Illinois which involved the question of nuisance. The Company sought to defend because of its

charter rights; but this Court held that the State could give an effectual remedy, saying (p. 667): "It rests upon the fundamental principle that every one shall so use his own as not to wrong or injure another. . . . . Pure air and the comfortable enjoyment of property are as much the rights belonging to it as the right of possession and occupancy."

In *Georgia* v. *Tennessee Copper Company* (206 U. S. 230), the State filed its Bill in this Court to enjoin the discharge of noxious gases from the works of defendant in the State of Tennessee. The allegations of the Bill showed that as a result of these gases there was destruction of forest trees, orchards, crops and other injuries. In the course of the opinion it is said: "It hardly is denied and cannot be denied with success that this often is carried by the wind great distances and over great tracts of Georgia land. From the evidence the pollution of the air and the magnitude of that pollution are not open to dispute."

In *Mugler* v. *Kansas* (123 U. S. 623, 673), this Court said: "The ground of equity jurisdiction in cases of purpresture as well as of public nuisance is the ability of courts of equity to give more speedy, effectual and permanent remedy than can be had at law. They can not only prevent nuisances that are threatened and before irreparable mischief results but arrest or abate those in progress and by perpetual injunction protect the public against them in the future. . . . . This is a salutary jurisdiction especially where the nuisance affects the health, morals or safety of the community."

It is well established that noxious smells may constitute a nuisance. (*Baltimore, etc. Railroad Co.* v. *Fifth Baptist Church*, 108 U. S. 317.) In *Block* v. *Baltimore*, 149 Md. 29, 51, where the Maryland court considered a case arising out of the transportation of offensive materials by scows from the city to reduction plants, and says (p. 56): "That the conditions complained of constituted an unwholesome danger and offense is obvious."

Replying to the contention that the bill did not contain allegations sufficient to maintain it, that court, after stating the facts, said (p. 51): "It would be a reproach to the law if it afforded the plaintiff no adequate relief from the burdensome and intolerable conditions shown by those facts."

In *Northwestern Fertilizer Company* v. *Hyde Park, supra,* this Court, adopting the findings of the Illinois Court, said: "That a nuisance of so flagrant character exists, as found by the Court below, is not controverted."

And in *Georgia* v. *Tennessee Copper Company, supra,* this Court granted relief against a nuisance caused by the discharge of gases from the defendant's work in Tennessee, and said (p. 238): "It is a fair and reasonable demand on the part of a sovereign that the air of its territory should not be polluted on a great scale by sulphuric acid gas; that the forests on its mountains, be they better or worse and whatever domestic destruction they have suffered, should not be further destroyed or threatened by the acts of persons beyond its control." (See *Missouri* v. *Illinois,* 180 U. S. 208); *Board of Health* v. *Schmidt,* 83 N. J. Eq. 35, 36; *Butterfoss* v. *State Board,* 40 N. J. Eq. 325.)

I conclude that the conditions described in this case amount to a public nuisance, and that the State and communities affected should not be required to tolerate the same.

4. Prescription.

The authorities declare that if the facts develop a public nuisance there can be no prescription. Thus in *Block* v. *Baltimore, supra,* the Maryland court said (p. 59): "But the wrong complained of and disclosed by the evidence amounts to a public nuisance and there can be no prescription" (citing *Woodyear* v. *Schaefer,* 57 Md. 10).

This Court said in *Northwestern Fertilizer Company* v. *Hyde Park, supra:* "In such cases prescription, whatever

the length of time, has no application. Every day's continuance is a new offense." And in *Missouri* v. *Illinois* (200 U. S. 496, 520), it is said: "The reasons upon which prescription for a public nuisance is denied or may be granted to an individual as against a sovereign power to which he is subject have no application to an independent state."

5. Municipality: Degree of Proof.

But the defendant claims that it is performing governmental functions and entitled to invoke the rule of proof required of plaintiffs in actions between sovereign states. The rule relied upon is stated in *North Dakota* v. *Minnesota* (263 U. S. 364), as follows:

> "In such action by one state against another the burden on the complaining state of sustaining the allegations of its complaint is much greater than that imposed upon a complainant in ordinary suits between private parties. Before this Court can be moved to exercise its extraordinary power under the Constitution to control the conduct of another state at the suit of another the threatened invasion of rights must be of serious magnitude and it must be established by clear and convincing evidence."

There is a qualification of the rule stated in a case by the State against a corporation or person. "Some peculiarity necessarily marks a suit of this kind. If the State has a case at all it is somewhat more certainly entitled to special relief than a private party might be" *(Georgia* v. *Tennessee Copper Company,* 206 U. S. 230, 237). And further in that case this Court said, at page 238: "This Court has not quite the same freedom to balance the harm that will be done by an injunction against that of which the plaintiff complains that it would have in deciding between two subjects of a single political power."

That the defendant is a political subdivision of the State, created as a convenient agent for exercising certain governmental powers entrusted to it by the State *(Hunter* v. *Pittsburgh,* 207 U. S. 161, 178), or is a department of the state government *(City of Trenton* v. *New Jersey,* 262 U. S. 182, 187) would seem to be settled by these cases.

The fact is that the parent State has left to the defendant the determination of the method to be adopted in carrying out certain duties, certainly those with reference to sanitation, and the further fact is that the conditions complained of here are the results of the adoption by the defendant of its own methods. It was not necessary that the defendant dump its garbage at sea except in an emergency. It was put on notice as early as 1907 by a report of distinguished engineers to the Mayor of the City, already referred to, that the method of garbage disposal by dumping it at sea is not the best method. In discussing that method of disposition they said as follows:

> "All the refuse collected could be dumped into the Atlantic Ocean but unfortunately the least harmful material sinks and the foulest floats, so that much of the floating mass will be scattered along the beach through the action of the current and wind. This fouling of the beach createst a nuisance that the public should not be asked to tolerate. The cost of sending the scows so far at sea that there would be no danger of fouling the beaches and the delays and interruptions caused by storms forbid the use of this plan. The dumping of refuse at sea should not be resorted to except in cases of emergency when the burdens of such sea-dumping will be of short duration."

Again in 1921 a Committee appointed by the Mayor of New York, and above referred to, made a report to the Mayor in which they stated as follows:

> "The greatest objection to the present system of disposing of waste material is in connection with the method now being used for getting rid of garbage,

which is both unsanitary and uneconomic. For some years the disposal of garbage not only did not cost the City anything but as a matter of fact returned a small yearly profit. Aside however from the question of cost it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent if they do not openly object to it and there is always the possibility of objection from other communities and from the people claiming that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal."

Prior to this last report the City had been informed by the Supervisor of the Harbor of bad conditions on the shores arising from the dumping at sea. The Mayor requested the right to dump the scows nearer than the area at that time prescribed by the Supervisor. The latter declined the request because of the complaints about the garbage.

The defendant had been satisfactorily using the "reduction" system of garbage disposal when in an "emergency" it was authorized to dispose of it at sea. In the meantime it has erected a number of incinerating plants and plans to erect more. One reason given for the delay in building the needed incinerators is that the defendant was not given the power of condemnation of sites. It has such power now, conferred in 1929, and it is a question whether the defendant, given the right and duty of performing a function that may be called a governmental function but not given the power necessary for its full performance may indefinitely follow a course as heretofore stated to the injury of others and still claim that in such matters it is in the position of the state itself. But if the stricter rule be applied I think the only reasonable conclusion to be reached under all the evidence is that the

objectionable conditions on the beaches and in the adjacent waters complained of in this suit are caused by and due to the action of the defendant in dumping its garbage and refuse into the waters of the ocean as already stated. There has not only been an invasion of serious magnitude of the plaintiff's rights extending through some years but it is continuing and is threatened for an indefinite period.

6. Jurisdiction.

The defendant insists further "that the dumping is done at designated places which are not in the navigable waters of the United States but on the high seas, more than a marine league from the beaches and territorial waters of the state of New Jersey, over which this Court has, in this case, no authority, control or jurisdiction."

There seems to be some inconsistency between the contention of the defendant that the permits of the Supervisor afford protection and yet that the appointed places are not within the navigable waters of the United States.

The authorities cited to this proposition relate to the cases in the District Courts where the question was whether the act complained of was done in the one District or another, the holding being that an action to abate a nuisance must be brought in the District where the nuisance is situated. (*United States* v. *Newark Meadows Improvement Company*, 173 Fed. 426; *McGowan* v. *Columbia River Power Association*, 245 U. S. 352.) In *Mississippi & Missouri Railroad Company* v. *Ward* (2 Black 485), it appeared that Ward sued the defendant, a citizen of Illinois in the District of Iowa, to restrain the continuance of an alleged nuisance arising from the manner of the construction of a bridge over the Mississippi River, the boundary between the two states being the center of the river. The allegation was that the obstruction was on the Illinois side. This Court held that the District Court of Iowa was without jurisdiction, and said (p. 494): "He seeks nothing from

the person of the defendant but seeks to remove a local object because he has sustained certain damages from the object. The District Court has no power over the local obstruction inflicting the injury nor any jurisdiction to make inquiry of the fact whether the damage had been sustained or how much. These facts are beyond the Court's jurisdiction and the inquiry outside of the state."

This Court has, however, a jurisdiction that the District Court did not have. In the present case both the aggrieved and the offending parties are before the Court and subject to its decrees. The property affected is within the United States. (*Massie* v. *Watts*, 6 Cranch 148, 159; *Hart* v. *Sansom*, 110 U. S. 151, 154). In *People* v. *International Nickel Company* (168 App. Div. 245, S. C. 218 N. Y. 644), it was held that fumes from an industrial plant in the State of New Jersey brought by the wind into the State of New York to the injury of citizens of that State did not constitute an indictable nuisance in New York because the offense was not committed in New York. The defendant refers to this case as holding that "the site of this nuisance is in another state." The New York court, however, does suggest that the Supreme Court of the United States would be the forum for trial of such a case.

This Court has taken jurisdiction in just such cases. (*Georgia* v. *Tennessee Copper Company, supra*), where it said (p. 237) that the suit was "by a state for an injury to it in its capacity as quasi-sovereign. In that capacity the state has an interest independent and behind the title of its citizens in all the earth and air within its domains"; and further, "When the states by their union made the forcible abatement of outside nuisances impossible to each they did not there agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground there still remained quasi-sovereign interests and the alternative to force is a suit in this Court."

In *New York* v. *New Jersey* (256 U. S. 296), the plaintiff sought an injunction against the discharge of sewage into

the upper bay, a part of New York harbor, claiming that this discharge constituted a serious injury to health, property and the welfare of the State and citizens of New York. This Court took jurisdiction.

This Court also took jurisdiction in *Missouri* v. *Illinois* (180 U. S. 208), where it was alleged that the turning of Chicago sewage into the drainage canal polluted the Mississippi River and created a nuisance. The controversies were regarded as justiciable by this Court even though finally the bills were dismissed. (See *Wisconsin* v. *Illinois*, 278 U. S. 367; *North Dakota* v. *Minnesota*, 263 U. S. 365; *Pennsylvania* v. *West Virginia*, 262 U. S. 592).

I conclude the Court has jurisdiction.

There is expert testimony that the actual construction period for the building of a 350-ton incinerator would be one year, and that one or more can be completed within that duration of time from the period work starts on them severally. The evidence does not disclose what is a reasonable time for determining the availability of sites and for their acquisition.

My conclusions upon the whole case are that the defendant has created and continues to produce a public nuisance on the beaches and property of the State of New Jersey, as has been hereinbefore found, and that the plaintiff is entitled to relief in accordance with the prayer of the bill; but the defendant should be given a reasonable time within which to put into operation sufficient incinerators to care for its garbage and rubbish. (See *Georgia* v. *Tennessee Copper Company*, supra.)

RECOMMENDATIONS.

My recommendations are:

1. That the Court's decree should declare that the plaintiff is entitled to relief and to an injunction as prayed for, but that before an injunction shall issue a reasonable time

will be accorded defendant within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials such as are now being dumped by defendant at sea.

2. That in as much as the evidence adduced does not disclose what such reasonable time is the case be referred to a Master for findings of fact upon that subject.

Respectfully submitted,

EDWARD K. CAMPBELL,
Special Master.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 17, Original.

STATE OF NEW JERSEY, *Plaintiff,*

—against—

THE CITY OF NEW YORK, *Defendant.*

EXCEPTIONS OF THE DEFENDANT TO THE REPORT OF THE SPECIAL MASTER AND HIS RECOMMENDATIONS FOR DECREE AND TO HIS FAILURE TO FIND AS REQUESTED BY DEFENDANT.

Now comes The City of New York, the defendant above named in the above entitled suit and objects and excepts to the report of Hon. Edward A. Campbell, the Special Master, herein filed in the office of the Clerk of this Court on the 20th day of March, 1931, in the following particulars, to wit:

A. That this Court has jurisdiction to grant the relief demanded in the Bill of Complaint because among other things the suit is one to protect quasi sovereign rights of the plaintiff, because the defendant is before the Court, and the property affected is within the United States.

1. To so much of the conclusion, or purported conclusion, of law, set forth under the heading "Parties and

Jurisdiction" (Report of Special Master, p. 9), as concludes that the case presents a justiciable controversy over which this Court has jurisdiction.

1a. To so much of the finding of fact or conclusion of law, or both, set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 58), as finds that in the present case, both the aggrieved and the offending parties are subject to its (this Court's) decrees.

2. To so much of the finding of fact or conclusion of law, or both, set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 58) as finds that the property affected is within the United States.

3. To so much of the conclusions of law set forth under the heading "Some Questions of Law—6 Jurisdiction" (Report of Special Master, p. 59) as concludes that this Court has jurisdiction.

4. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 49) that The City of New York has not dumped garbage and refuse in the ocean for many years in any appreciable quantities within a marine league (three nautical miles) of the shores of the State of New Jersey, except on rare occasions either when necessary to preserve life where a scow was in danger of foundering or when there is some unauthorized action upon the part of the individuals employed by the contractors in charge of the scows or towboats.

5. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 50) that the territorial waters of the plaintiff do not extend more than one marine league or three nautical

miles from the Atlantic Coast shore line of said State of New Jersey at low water mark.

6. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 51) that the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid are not within the territorial limits of the plaintiff.

7. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 53) that the Atlantic Ocean dumping grounds used by the defendant in dumping its garbage as aforesaid, are not within the navigable waters of the United States.

8. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusions of Law 3 and 4) that he dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at points 8, 12 and 20 miles southeast of Scotland Lightship and about 10, 12 and 22 miles, respectively, from the Atlantic shore of the State of New Jersey, or much more than one marine league from said shore and its waters, was not and is not a dumping thereof in the navigable waters of the United States.

9. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 5) that the dumping in the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Lightship and from the New Jersey shore as stated in Exception No. 8, was not and is not a dumping thereof in the territorial waters of the State of New Jersey.

10. To the failure and refusal of the Special Master to conclude as a matter of law as requested by the defendant (Proposed Conclusion of Law 6) that the dumping in

the Atlantic Ocean by the defendant of garbage and refuse for many years last past at the points and distances from Scotland Lightship and from the New Jersey shore as stated in Exception No. 8, was a dumping thereof on and into the high seas.

11. To the failure and refusal of the Special Master to conclude as a matter of law, as requested by the defendant (Proposed Conclusion of Law 15) that by reason of the dumping in the Atlantic Ocean by the defendant of garbage and refuse at the places, in the manner and under the conditions aforesaid, no justiciable controversy between the plaintiff and the defendant is presented over which the Supreme Court of the United States has authority, jurisdiction or control under Article III, Section 2 of the Constitution of the United States or any other article of said Constitution or under any statute of the United Sates or under the Common Law.

B. That garbage and refuse in large quantities dumped by the defendant in the Atlantic Ocean more than a marine league from the shores and waters of the plaintiff is driven and carried by the winds and waters to and upon the beaches of the plaintiff and its adjacent waters, thus creating a public nuisance, to the great injury of the plaintiff's rights and property.

12. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that such parts of the garbage or refuse as float either on the surface or in suspension in the water, move with the direction of the wind and current, the wind exercising the greater influence on the direction of its movement, and the mass moves at times westward and northward or towards the shores of New Jersey or Long Island according to the direction and velocity of the wind.

13. To so much of Finding of Fact (16) (Report of Special Master, p. 25) as finds that the mass spreads out on the surface of the water gradually breaking up into smaller areas and moving for indefinite periods with the wind, some of the materials being on the surface and some in suspension.

14. To so much of Finding of Fact (16) (Report of Special Master, p. 26) as finds that some of the lobster fishermen have followed the floating garbage from the place where it is dumped by the defendant in the ocean to where it went ashore on New Jersey's beaches.

15. To so much of Finding of Fact (16) (Report of Special Master; p. 26) as finds that about 25% of the self-addressed, stamped postal cards deposited in sealed bottles dropped in garbage in the ocean immediately after the dumping by New York City scows came back to the parties depositing same by mail from persons along the New Jersey and Long Island shores and from further north.

16. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that the deposits of garbage and refuse produce unhealthful conditions interfering with and frequently preventing the comfort and enjoyable use of the beaches and sea, it being dangerous to leave children unattended on the beach while the deposits are there because of things they may pick up, some of the same being unmentionable; that broken glass and nails in pieces of wood have been the cause of severe wounds to persons on the beach or in bathing, and that it is a menace to health and tends to injure business and property values and rental values.

17. To so much of the Finding of Fact (7) (Report of Special Master, p. 16) as finds that during June, July

and August, 1929, there were in Asbury Park, a considerable increase over the preceding year of cases of external otitis which is a swelling or inflammation of the ear canal, and of cases of infection of the middle ear requiring the drum to be opened, and of sinus affected cases resulting from bathing in the ocean, and that one or more of the coast guard incurred a skin infection from the water which gave them considerable trouble.

18. To so much of the Finding of Fact (16)—Appearance and Movement—(Report of Special Master, p. 27) as finds that large parts of these floating and submerged areas of garbage and refuse, dumped by the defendant are driven and carried by winds and water to and upon the shores of the planitiff, and constitute the objectionable materials thereon and in the adjacent water, hereinbefore described.

19. To so much of the Finding of Fact, or Conclusion of Law, or both, set forth under the heading—Some Questions of Law—1. Trespass (Report of Special Master, p. 41) as finds that large areas of garbage and refuse floating upon or held in suspension by the water, which have been dumped by defendant's scows, are driven and carried by wind and water to and upon the shores of plaintiff and other portions or areas thereof are held for indefinite periods in the waters above soil owned by plaintiff and do great injury to fishing and bathing in such waters.

20. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—3. Nuisance" (Report of Special Master, pp. 50-51) as finds that the conditions on plaintiff's shores and adjacent waters produced by garbage and other objectionable materials alleged in the bill are proved by uncontradicted evidence. A summary of the

facts found may be stated as follows: Along the shores are many summer resorts and their beaches, and when unaffected by the bad conditions mentioned are pleasure grounds for thousands of visitors. * * * The deposits interfere with, and until removed frequently prevent, the use and enjoyment of the beaches for the purposes to which the latter are adapted and for the comfortable and enjoyable use of which people visit them. * * * Many visitors leave the resorts because they cannot use the beaches when littered or secure the surf bathing when the waters adjacent hold garbage and refuse in suspension and the chief value of the shores below high water mark and the soil under the adjacent waters for at least three nautical miles is in the fisheries and the fact that they can find and do afford the attractions pertaining to summer resorts, which fisheries and attractions are seriously interfered with by the deposits in question.

21. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—3. Nuisance" (Report of Special Masters, p. 53) as finds that conditions described in this case amount to a public nuisance, and that the State and communities affected should not be required to tolerate the same.

22. To so much of the finding of fact, or conclusion of law, or both, set forth under the heading "Some Questions of Law—5. Municipality—Decree of Proof" (Report of Special Master, pp. 56-57) as finds that even if the stricter rule of evidence be applied, I think the only reasonable conclusion to be reached under all the evidence is that the objectionable conditions on the beaches and in the adjacent waters complained of in this suit are caused by and due to the action of the defendant in dump-

ing its garbage and refuse into the waters of the ocean as already stated and that there has not only been an invasion of serious magnitude of the plaintiff's rights extending through some years but it is continuing and is threatened for an indefinite period.

23. To so much of the finding of fact, or conclusion of low, or both, set forth under the heading "Some Questions of Law—6. Jurisdiction" (Report of Special Master, p. 59) as find that the defendant has created and continues to produce a public nuisance on the beaches and property of the State of New Jersey and that the plaintiff is entitled to relief in accordance with the prayer of the bill.

24. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 46) that six different inspections made by an official from the Office of the United States Supervisor of the Harbor of New York in February, March and April, 1929, of garbage dumpings by New York City scows at the 8 and 12 mile dumping points where the drift of the garbage was followed for periods of from 12 to 24 hours each did not reveal a single occasion when the garbage reached any shore.

25. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 48) that when dumped, the lighter portion of the garbage floats while the heavier portion sinks, but that gradually some of that which at first floated, sinks, leaving a very considerably smaller portion floating at the end of 24 hours than at the time of dumping.

26. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 52) that garbage and refuse dumped by the de-

fendant into the ocean as aforesaid, has not found its way in any substantial quantities into the territorial waters or onto the beaches of the plaintiff.

27. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 54) that the dumping of garbage and refuse at sea as aforesaid by defendant, has not caused substantial injury to the navigation of the ocean by the plaintiff or its citizens or visitors.

28. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 55) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to bathing or bathing rights or property connected therewith on the part of the plaintiff or any of its citizens or visitors.

29. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 56) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to fishing or fishing rights or property used in connection therewith of plaintiff or its citizens or visitors.

30. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 57) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not substantially injured or menaced and does not substantially injure or menace the health, safety, comfort or welfare of the State of New Jersey or any of its citizens or visitors thereto.

31. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding

of Fact 58) that the dumping of garbage and refuse at sea as aforesaid by the defendant, has not caused any substantial injury to the commerce of the plaintiff or its citizens.

32. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 59a) that the prevailing winds along the coast of the plaintiff range from southwest to northwest—offshore winds.

33. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 60) that the dumping of garbage and refuse at sea by defendant as aforesaid, has not caused and does not cause any substantial depreciation to the value of the plaintiff's property or that of its citizens, has not retarded and does not retard the economic development of plaintiff's territory, and that of its municipalities in any substantial manner and does not impose in any substantial manner upon plaintiff's municipalities and inhabitants a constant or considerable expense in removing defendant's garbage and refuse from public and private property.

34. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 65) that the plaintiff failed to produce on the trial of this action, any scientific or expert evidence as to the effect of ocean currents or tides upon the movement of objects dumped into the ocean at from 10 to 22 miles from the New Jersey shore, and floating partially or wholly submerged in the ocean.

35. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 7) that the dump-

ing in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not obstructed and does not obstruct or impede the navigation of the waters of the United States or of the State of New Jersey.

36. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 8) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not injured or destroyed and does not injure or destroy the bathing or fishing rights or property therein of the plaintiff or its citizens or visitors thereto.

37. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 9) that the dumping in the Atlantic Ocean by the defendant as aforesaid, of garbage and refuse, has not regulated or destroyed and does not regulate or destroy the commerce of the State of New Jersey and/or its citizens in violation of Article I, Section 8, paragraph 3 of the Constitution of the United States or of any statute of the United States.

38. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 10) that the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse, has not taken and does not take any property or right of the plaintiff and/or its citizens, without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

39. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 13) that the dumping in the Atlantic Ocean by the defendant as afore-

said, of garbage and refuse, has not deprived and does not deprive the plaintiff and/or any of its citizens of the natural advantages of its or their position along the seashore contrary to the sovereign rights of said State as a member of the Union or of any of such rights.

40. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 16) that the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid, of garbage and refuse, has not been and is not an unreasonable disposition of the same as a matter of law.

41. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 18) that the plaintiff herein must prove its claims and case against the defendant herein by clear and convincing evidence.

42. To the failure and refusal of the Special Master to conclude as a Matter of Law as requested by the defendant (Proposed Conclusion of Law 19) that the plaintiff herein failed to prove by clear and convincing evidence that any substantial portion of the garbage and refuse which found its way into the waters of the State of New Jersey or onto its shores or beaches was that which was dumped into the Atlantic Ocean by the defendant.

43. To the failure and refusal of the Special Master to conclude as a matter of law, as requested by the defendant (Proposed Conclusion of Law 17) that the dumping in the Atlantic Ocean by the defendant at the places and in the manner aforesaid, of garbage and refuse has not created and does not create a public nuisance as a matter of law in respect to the plaintiff and/or its citi-

zens or visitors or a public nuisance which seriously impairs the usefulness, wholesomeness and safety of the waters, beaches and shorefront facilities of the plaintiff, or its citizens, or damages the property of said plaintiff, its municipalities and citizens or their health, safety and welfare.

C. That compliance by the defendant with the provisions of the Act of Congress of June 29, 1888 (29 stat. 209) as amended and the permits to dump garbage in the Atlantic Ocean at a distance in excess of one marine league from the shores of New Jersey issued by the Supervisor of the Harbor of New York in accordance with said Act, do not relieve the defendant from the effect of the public nuisance resulting from and created by said dumping.

44. To so much of the Finding of Fact set forth under the heading "Some Questions of Law —2. Permits" (Report of the Special Master, p. 45) as finds that the Act (29 Stat. 209, as amended) contemplated that the Supervisor prescribe certain limits, but there is no evidence in this case as to what limits were prescribed.

45. To so much of the Finding of Fact or Conclusion of Law or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 47) as finds, or purports to find, that although the defendant dumps its garbage under permits issued by the Supervisor of the Harbor of New York at points in excess of one marine league from the shore of New Jersey; it is difficult to understand how that fact affords any defense in this case.

46. To so much of the Conclusion of Law set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 47) as concludes that

the authority of the Federal Government does not extend beyond the requirements of navigation.

47. To so much of the Conclusion of Law set forth under the heading "Some Questions of Law—2. Permits" (Report of the Special Master, p. 48) as concludes that the powers which the Supervisor has under the statute and the effect to be given the permits authorized to be issued are to be strictly construed because of the effect of the dumping upon the rights of others.

48. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 48) as concludes that the fact that the defendant is a municipal corporation does not afford immunity from the results of its own action.

49. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Questions of Law—2. Permits" (Report of Special Master, p. 49) as concludes that the Act of 1888, as amended, furnishes no defense to the defendant and that compliance with permits from the Supervisor of the Harbor acting under the provisions of that Act does not furnish a defense nor relieve it from the effect of a public nuisance resulting from or created by its action.

50. To the failure and refusal of the Special Master to conclude as a matter of law as requested by defendant (Proposed Conclusion of Law 14) that the dumping in the Atlantic Ocean by the defendant as aforesaid of garbage and refuse under permit from, and supervision of, the Government of the United States through its Supervisor of the Harbor of New York and in accordance with the provisions of Title 33, Chapter 9, Sections 441-451 inclusive, U. S. Code (approved June 30, 1926) and preceding statutes on which founded, is a compliance with

each and every regulation and statute of the United States relating to navigation, commerce and/or any other subject over which Congress has exercised the jurisdiction of the United States.

D. That such garbage and refuse as reaches the plaintiff's shores from the dumpings by coastwise and other vessels and from other sources is negligible in comparison with that dumped by defendant and reaching plaintiff's shores and constitutes no defense to plaintiff's complaint.

51. To so much of the Finding of Fact set forth under the Heading "Some Issues of Fact" (Report of Special Master, p. 31) as finds, or purports to find, that there is evidence that only some coastwise and other vessels discharge garbage refuse into the ocean.

52. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 31) as finds, or purports to find, that a witness introduced by the defendant made an estimate to the effect that there were only twenty vessels a day going and coming from southern ports to New York.

53. To so much of the Finding of Fact or Conclusion of Law, or both, set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 35) as finds or concludes that testimony that some vessels discharge garbage and refuse after clearing from New York, falls short of establishing a custom by other vessels.

54. To so much of the Finding of Fact set forth under the heading "Some Issues of Fact" (Report of Special Master, p. 36) as finds, or purports to find, that whatever garbage and refuse reaches the plaintiff's shores from coastwise and other vessels and other causes and other dumpings than those of the defendant are negligible in

comparison with that constantly being dumped by the defendant and frequently carried by winds and waves from the dumping places to and upon plaintiff's shores as hereinbefore stated.

55. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 27) that the scows of private contractors, having no connection with the City of New York, containing "cellar dirt," i. e., debris from buildings that have been torn down consisting of joists, timbers, laths, plaster, etc., of a very light kind have for years been dumped and are being dumped into the Atlantic Ocean under permit from the Supervisor of the Harbor of New York at a point about 4 miles southeast of Scotland Lightship.

56. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 33) that cargoes of condemned foodstuffs, vegetables, fruits, etc.) are also dumped at sea under permit from the Supervisor of the Harbor of New York at a point 25 miles from the New Jersey shore.

57. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 34) that Brooklyn Navy Yard scows containing refuse and garbage also dumped at sea at the regular dumping points at which New York City garbage is dumped.

58. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 35) that the Supervisor of the Harbor of New York in his report for 1929, stated that it is probable that a great deal of garbage is dumped both outside and inside the harbor entrance by the enormous tonnage passing in and out of New York Harbor and also that the local floating equipment throws more or less garbage overboard.

59. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of

Fact 36) that the records of the Collector of the Port of New York show that in 1928-1929 the following was the number of vessels clearing from or entering such port from points south thereof for periods of two months at a time; months of December 1928 and January 1929, foreign and coastwise vessels entering, 1,227; clearing, 1,173. Months of July and August, 1929, foreign and coastwise vessels entering, 1,105; clearing, 1,192.

60. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 37) that the sea lane or route for coastwise ships going to and coming from points south of New York is about 2½ to 3 miles over the New Jersey coast at Seabright, Monmouth Beach and Asbury Park; 5 miles at Sea Girt and 8 Miles at Barnegat Lighthouse.

61. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 38) that practically all freight and passenger ships leaving and entering New York Harbor (especially those leaving) dump more or less garbage and refuse in such sea lane.

62. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 39) that many freight and passenger lines and ships feed their crews in port and none of their garbage or refuse is removed by the City or disposed of by the ship while in port, but such accumulations consisting of bottles, tin cans, electric light bulbs, pieces of meat, fruit, other food waste, wood, mattresses, pillows, shoes, old clothes, boxes, barrels, crates, etc., are dumped after passing Scotland Lightship.

63. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 40) that passenger and freight ships often anchor in great numbers during a fog for 24 hours or more outside of the harbor and dump garbage accumulated during that period into the sea where they are anchored.

64. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 41) that the holds of cargo boats are usually swept in port after the removal of the cargo and before reloading; that such sweepings and also sweepings from the forecastle are placed on deck for dumping in addition to garbage and refuse and all are dumped in said sea lane for coastwise ships shortly after passing Scotland Lightship on the way south.

65. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Find of Fact 42) that fruit, vegetables, poultry and other supplies delivered to the ships in port to feed passengers and crews, are usually packed in crates, barrels and boxes which have the names on them of New York dealers from whom they are bought, and such crates, boxes and barrels, partly broken up, are on most ships piled on deck and dumped with other refuse in said sea lane shortly after passing Scotland Lightship on the way south.

66. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 45) that insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park on the Atlantic Coast of New Jersey has been and is being discharged into the Atlantic Ocean within a short distance from the beaches of each of those cities.

67. To the failure and refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 64) that from 1896 to 1918, except for a few months in 1903 (1906) no New York City garbage and only a part of its refuse was dumped at sea, yet during that period a large amount of garbage and refuse was washed up into the New Jersey waters and onto its Atlantic shore front beaches.

68. To the failure and refusal of the Special Master to Find as requested by defendant (Proposed Finding of Fact 66) that the deposit in substantial quantities in the Atlantic Ocean at points varying from 2½ to 8 miles from the Atlantic shore front of the plaintiff State commencing with the minimum distance at Sandy Hook and extending to Barnegat Lighthouse where the maximum distance existed, of garbage, refuse and cellar dirt (material taken from demolished buildings in New York City) by steamships and other floating equipment and by scows of private contractors, of the same kind and character as that deposited in said ocean as aforesaid by defendant much further away from said shore front of the plaintiff, and the deposit of garbage and refuse in said ocean by the United States (Brooklyn) Navy Yard authorities at the points where defendant dumped and the deposit in said ocean less than ½ mile from plaintiff's said shore front of insufficiently treated and unsanitary sewage from the cities of Long Branch and Asbury Park, makes it impossible to determine as a fact, whether garbage and refuse and other offensive matter in substantial quantities is deposited by defendant in the waters of the State of New Jersey or on its beaches.

69. To the failure and refusal of the Special Master to conclude as a matter of law as requested by defendant (Proposed Conclusion of Law 20) that by reason of the deposit in substantial quantities of garbage, refuse, cellar dirt and unsanitary sewage in the Atlantic Ocean by agencies other than defendant, at points much nearer the coast of plaintiff or no further therefrom than where the deposits of garbage and refuse are made by defendant in said ocean as aforesaid, it is impossible to determine whether such garbage and refuse deposited by defendant in said ocean off the coast of the plaintiff, reaches its waters and beaches in substantial quantities, and therefore defendant is not liable to the plantiff for the injuries

alleged to have been suffered by the plaintiff, its citizens and visitors.

E. Particular exceptions to the Special Master's report and to his failure to find facts and make Conclusions of Law as requested by defendant and in support of its contention that on all of the evidence, a case for equitable relief in favor of the plaintiff, was not made out.

70. To so much of Finding of Fact (14)—Supervisor's Reports—(Report of the Special Master, p. 23) and of Finding of Fact (17)—Incinerators—(Report of Special Master, p. 29) as finds that the first incinerating plant was put in operation by the City of New York in February, 1924.

71. To so much of Finding of Fact (17)—Incinerators—(Report of the Special Master, p. 30) as finds that the evidence does not show the cause of the apparent delay by the defendant in adopting and putting into operation the incinerating system, and that it was in 1924, some five years after the defendant began dumping at sea, that its first incinerator was put into operation, and during the next succeeding five years others were built. That those constructed and in use fall far short of taking care of the garbage and refuse situation.

72. To so much of Finding of Fact, or Conclusion of Law, or both, (17)—Incinerators—(Report of Special Master, p. 30) as finds that the delay of the defendant in adopting a proper method of disposal has been unreasonably long.

73. To the failure or refusal of the Special Master to find as requested by the defendant (Proposed Finding of Fact 17) that three incineration plants were built in the Borough of Manhattan as a result of an appropriation of

$5,000,000 made in July, 1921, the first being completed in February, 1924, the second in November, 1925, and the third on October 1, 1928, the cost of each incinerator being about $1,000,000, exclusive of the cost of the land on which built.

74. To the failure and refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 19) that the commencement of building operations on a fourth site was halted by injunction duly obtained in the Supreme Court of the State of New York.

75. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 20) that in the Borough of Brooklyn there are two incinerators, each with the capacity of 100 tons a day and three with a capacity of 500 tons a day each, all now in operation, built by a contractor under a contract to dispose of all material that may be delivered, and since December 1, 1929, no garbage from that borough has been dumped at sea.

76. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 21) that in the Borough of Queens there are now nine incinerators operating with an average daily garbage and refuse consumption of from 100 to 270 tons and that borough has never dumped any of its garbage at sea.

77. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 22) that in the Borough of Richmond there are now three incinerators in operation and none of the garbage from that borough has been or is now being dumped at sea.

78. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 24) that approximately only 27 per cent. of the gar-

bage collected in the City of New York is dumped at sea, the greatest proportion of which comes from the Borough of The Bronx, and such amount will be continually reduced.

79. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 63) that the dumping in the ocean by the defendant more than a marine league from the New Jersey coast at points 8, 12 and 20 miles southeast of Scotland Lightship designated by the United States Supervisor of the Harbor of New York and under conditions imposed by him of about 27 per cent. of the garbage collected by said City is not in fact an unreasonable disposition of its total garbage collections, pending the carrying out of its plans for the installation of additional incinerators.

80. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 61) that the size, summer population, property investments and assessed value of property of practically all of the New Jersey communities and municipalities located along the Atlantic Ocean shore front from Highlands to Seaside Park has increased greatly during the period from 1919 to 1929, during which the City of New York has been dumping a portion of its garbage and refuse into the Atlantic Ocean as aforesaid.

81. To the failure or refusal of the Special Master to find as requested by defendant (Proposed Finding of Fact 62) that, although much more garbage and refuse has been dumped at sea by the City of New York during the summer months than during those of winter, the summer population of, and visitors to, all of the New Jersey Atlantic shore front communities and municipalities claimed by plaintiff to have been injured, is and are many times greater than in winter.

82. To so much of the Finding of Fact set forth in the report of the Special Master under the heading "Some Issues of Fact," page 34, as finds that as to the Long Branch sewer the evidence consists only of a plan of the sewage system and some evidence that complaints were at one time made to the Department of Health, which investigated the same, and that the matters were satisfactorily adjusted.

83. To so much of the Finding of Fact set forth in the report of the Special Master under the heading "Some Conclusions of Law," page 50, as finds that some scows have left upon them considerable quantities of garbage or refuse after their gates have been thrown open to release the contents, and these remnants are cast off by the men in charge as the scows are being taken back from the dumping area, and that the general practice continues, more materials being dumped in 1929 than in the preceding year.

84. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 3), that by Chapter 378 of the Laws of 1897 of the State of New York, known as The Greater New York Charter, various municipalities of the State of New York were united and consolidated into the City of New York, which was thereby divided into five boroughs, known, respectively, as the boroughs of Manhattan, The Bronx, Brooklyn, Queens and Richmond.

85. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Findings of Fact 5 and 6), that by said Chapter 378 of the Laws of 1897 of the State of New York, a Department of Street Cleaning was created in the municipal government of said city, with jurisdiction over the removal and dis-

position, as often as the public health required, of ashes, refuse, street sweepings and garbage collected in said city, but that by Chapter 466 of the Laws of 1901, jurisdiction over the removal and disposition of said substances collected in the Boroughs of Queens and Richmond was transferred to the presidents of said boroughs

86. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 7), that by Local Law No. 13 of 1929, of the City of New York (duly adopted by the Municipal Assembly of said city in accordance with the provisions of Chapter 363 of the Laws of 1924 of the State of New York) in force from and after December 1, 1929, amending and supplementing said provisions of said Greater New York Charter, as amended, a Department of Sanitation was created, to which was transferred jurisdiction over the removal and disposition of ashes, refuse, street sweepings and garbage collected in all of said five boroughs of said city.

87. To the failure and refusal of the Special Master to find, as requested by the defendant (Proposed Finding of Fact 15) that, on collection, this garbage is taken to docks or dumping boards on the waterfront of said city and is then dumped into city-owned barges, which are designated by the initials of the departmental name and letters of the alphabet, and these are towed to sea by tugboats chartered from, and in charge of, contractors, and the contents are there dumped.

88. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 1), that the defendant, The City of New York, is a municipal corporation and a political subdivision of the State of New York, administering governmental functions in the localities de-

scribed in Sections 1 and 2 of Chapter 378 of the Laws of 1897 of the State of New York, as amended by Chapter 466 of the Laws of 1901 of said State, and subdivided into five boroughs therein described.

89. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 2), that the Department of Street Cleaning and the Presidents of the Boroughs of Queens and Richmond of the City of New York, for many years prior to and until December 1, 1929, and thereafter the Department of Sanitation thereof, had jurisdiction in said city over the removal and disposition, as often as the public health required, of ashes, refuse, street sweepings and garbage in said city.

90. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 12), that the dumping in the Atlantic Ocean by the defendant, as aforesaid, of garbage and refuse has not violated, and does not violate, Public Laws of New Jersey, 1882, page 155 (3. Compiled Statutes of New Jersey "Pilots", Sec. 47, p. 3958), nor any other statute of the State of New Jersey.

91. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 21), that the plaintiff has failed to prove facts sufficient to constitute a cause of action in equity for the relief demanded in the complaint or for any relief whatever in equity.

92. To the failure and refusal of the Special Master to conclude, as a matter of law, as requested by the defendant (Proposed Conclusion of Law 22), that the

defendant is entitled to a dismissal of the complaint herein, with costs to the defendant.

F. Recommendations for Decree.

The defendant also objects and excepts to the recommendations for a decree made by the Special Master in the following particulars:

93. To subdivision No. 1 (Report of Special Master, pp. 59-60) in its entirety.

94. To subdivision No. 2 (Report of Special Master, p. 60) in its entirety.

Respectfully submitted,

ARTHUR J. W. HILLY,
Corporation Counsel of The City of New York,
Solicitor for the Defendant.

ELLIOT S. BENEDICT,
J. JOSEPH LILLY,
THOMAS W. A. CROWE,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES.

No. 17, Original.—October Term, 1930.

State of New Jersey, Plaintiff,
vs.
The City of New York, Defendant.

[May 18, 1931.]

Mr. Justice Butler delivered the opinion of the Court.

New Jersey invokes our original jurisdiction under § 2, Art. III of the Constitution.

The complaint alleges that the City of New York for many years has dumped and still is dumping noxious, offensive and injurious materials—all of which are for brevity called garbage—into the ocean; that great quantities of the same moving on or near the surface of the water frequently have been and are being cast upon the beaches belonging to the State, its municipalities and its citizens, thereby creating a public nuisance and causing great and irreparable injury. It prays an injunction restraining the City from dumping garbage into the ocean or waters of the United States off the coast of New Jersey and from otherwise polluting its waters and beaches.

Defendant by its amended answer denies the allegations that constitute the gravamen of the complaint.

For a first defense it states that for many years it has dumped garbage into the Atlantic Ocean under the supervision of the supervisor of the harbor of New York and in accordance with permits issued by him under the Act of June 29, 1888 (33 U. S. C., §§ 441, 443, 449 and 451) at points about 8, 12 and 20 miles southeast from the Scotland Lightship and about 10, 12½ and 22 miles respectively from the New Jersey shore and not in the waters of New Jersey or of the United States, and that in view of these facts the Court has no authority to enjoin it from so dumping garbage.

And for a second defense it alleges that for many years garbage in large quantities has been and is being dumped by others inside

and outside the entrance of the harbor and at various places from 2½ to 8 miles from the New Jersey shore and at other places from 3 to 25 miles southeast of Scotland Light, that this material would float upon the New Jersey beaches alleged to have been polluted, that it is impossible to determine whether garbage dumped by defendant is carried to such beaches, and that, if any injury or damage is suffered by New Jersey, its municipalities or citizens, the injury is not chargeable to defendant.

And for a third defense it alleges that the complaint fails to state facts sufficient to entitle plaintiff to any relief.

The Court appointed Edward K. Campbell as Special Master and authorized him to take and report the evidence together with his findings of fact, conclusions of law and recommendations for a decree. The Master filed his report and the evidence introduced by the parties. It sets forth his findings, conclusions, and recommendations.

The substance of the findings of facts follows:

New Jersey borders on the Atlantic for about 100 miles. The shore principally involved extends from Atlantic Highlands southerly 50 miles to Beach Haven. On this stretch of shore, there are 29 municipalities. The State has conveyed or leased portions of the frontage to municipalities and individuals. It still owns 285,000 lineal feet between Sea Bright and Beach Haven. Municipalities have about 13,000 lineal feet and private parties the rest. The assessed value of property within these municipalities exceeds $139,000,000, and their population is more than 160,000. They are summer resorts and the number of summer visitors is many times greater than their population. The beaches are gently sloping and wide and have been improved at great expense. The ocean and bathing, fishing and boating are the principal attractions. Inhabitants of the municipalities chiefly depend for their livelihood upon the business of maintaining these summer resorts. Approximately 500 persons are engaged in the operation of fish pounds constructed under authority of the State within three nautical miles from the coastline. This is a commercial activity that results in the taking of large quantities of fish annually.

Vast amounts of garbage are cast on the beaches by the waters of the ocean and extend in piles and windrows along them. These deposits are unsightly and noxious, constitute a menace to

public health and tend to reduce property values. Prompt removal is necessary, and men are regularly employed to haul them away. At times there are 50 truckloads deposited on a single beach. When garbage is carried upon the shore the adjacent waters hold large quantities in suspension. Floating garbage makes bathing impracticable, frequently tears and damages fish pound nets and injuriously affects the business of fishing. Usually the sea along the shore clears within a few days and sometimes within a single day. The deposits generally occur when the winds are from the east or northeast but sometimes southeast winds bring them in. The heavier deposits occur four or five times in a season and frequently throughout the year varying in number on different beaches.

For about 20 years prior to 1918 defendant disposed of its garbage by a reduction system and, except for a brief period in 1906, did not dump any at sea. A plant was destroyed by fire in 1917 and a contractor failed. It then applied to the supervisor of the harbor for permission to dispose of its garbage at sea and, because of the conditions then existing, he gave such permission and designated a dumping place. But later, because of complaint from New Jersey beaches, he designated the areas specified in defendant's answer. The defendant has installed and uses some incinerating plants but, by reason of increasing population and volume of garbage, the quantities still being dumped at sea are very large.

Weather permitting, the City dumps garbage daily. Less is dumped in the winter than in the summer. In February, 1929, the quantity was 52,000 cubic yards while in June of the same year it was 192,000. When dumped the mass forms piles about a foot above the water, spreads over the surface and breaks into large areas. Some materials remain on the surface and others are held in suspension. These masses float for indefinite periods and have been found to move at the rate of more than a mile per hour. Areas of garbage have been seen between the dumping places and the New Jersey beaches, and some have been followed from the place where dumped to the shore. In his report to the chief of engineers for 1918 and in each of his subsequent annual reports the supervisor of the harbor of New York stated that garbage deposited in the sea, no matter what the distance from the shore, is liable to wash up on the beaches.

The Master concluded that large parts of these floating and submerged areas of garbage dumped by the defendant, are driven and carried by winds and water to and upon the shores of the plaintiff, and constitute the objectionable materials thereon and in the adjacent water.

In 1907 a committee appointed by the mayor reported to him: "All of the refuse collections could be dumped into the Atlantic ocean, but unfortunately the least harmful material sinks and the foulest floats, so that much of the floatable mass will be scattered along beaches through the action of current and wind. This fouling of beaches creates a nuisance that the public should not be asked to tolerate." In June, 1921, a committee composed of heads of departments and officials of the City reported to the mayor: "Aside, however, from the question of cost it seems undesirable to dump garbage at sea as it is being done at present. It is known that the Federal authorities quietly resent, if they do not openly object to it, and there is always the possibility of objections from other communities which have in the past claimed that they have been injured by the practice. When these objections become sufficiently strong it may be that New York will find itself so unprepared as to be unable to quickly introduce a more satisfactory form of disposal." The defendant, through its mayor and other representatives, has for years been informed that the dumping of its garbage is undesirable, and that other municipalities by the sea have suffered injury as the result of such dumping. Governors and the legislature of New Jersey have repeatedly complained to defendant. In 1929 the City had 20 incinerators and considerable garbage is being destroyed by them. In December of that year the department of sanitation presented to the mayor a program for increasing the number. The cause of the delay in providing an adequate disposal system was not shown.

The Master concluded that the method of disposing of garbage by dumping at sea was not an approved or a good system and disposition of such material by incineration or the "reduction system" was a proper way to dispose of the same. He found that the delay of defendant in adopting a proper method of disposal had been unreasonably long.

The Master found that whatever garbage reaches the plaintiff's shores from vessels and other dumpings than those of the defendant

was negligible in comparison with that constantly being dumped by the defendant.

As his conclusions of law, the Master reports that the defendant has created and continues to create a public nuisance on the property of New Jersey and that the latter is entitled to relief in accordance with the prayer of its complaint, but that defendant should be given reasonable time within which to put into operation sufficient incinerators. He recommends that decree be entered accordingly.

The plaintiff filed no exceptions to the Master's report. The defendant excepted to substantially all material findings and conclusions. The Court has heard the arguments of counsel for the respective parties and considered their briefs for and against the exceptions and upon final submission of the case. The evidence abundantly sustains the findings of fact.

The defendant maintains that the Master erred in concluding that it has unnecessarily delayed providing incinerators. The record shows that garbage gathered in the Boroughs of Queens and Richmond has not been dumped at sea. The quantities shown to have been so dumped were taken from the Boroughs of Manhattan, Bronx and Brooklyn. The amounts collected, the amounts dumped and the percentage that the latter is of the former for the years 1924 to 1929 inclusive were shown in the evidence and are indicated in the margin.* While such percentages have substantially decreased, the diminution of quantities actually dumped has been relatively slight.

Further discussion of the evidence would serve no useful purpose. It is enough to say that defendant has suggested no adequate reason for disturbing the findings. They are approved and adopted by the Court.

Defendant contends that, as it dumps the garbage into the ocean and not within the waters of the United States or of New

*Year	*Amount collected (from 3 boroughs only)*	*Amount Dumped at Sea*	*Approximate Percentage*
1924 ------	1,837,970	1,675,657	.91
1925 ------	1,812,251	1,517,934	.83 2/10
1926 ------	1,869,752	1,303,119	.69 6/10
1927 ------	1,782,299	1,219,416	.68 4/10
1928 ------	1,955,818	1,378,572	.70
1929 ------	2,519,758	1,478,165	.58 7/10

Jersey, this Court is without jurisdiction to grant the injunction. But the defendant is before the Court and the property of plaintiff and its citizens that is alleged to have been injured by such dumping is within the Court's territorial jurisdiction. The situs of the acts creating the nuisance, whether within or without the United States, is of no importance. Plaintiff seeks a decree in personam to prevent them in the future. The Court has jurisdiction. Cf. *Massie* v. *Watts*, 6 Cr. 148, 158 et seq. *Hart* v. *Sansom*, 110 U. S. 151, 154. *Cole* v. *Cunningham*, 133 U. S. 107, 116. *Philadelphia Co* v. *Stimson*, 223 U. S. 605, 622-623.

There is no merit in defendant's contention, suggested in its amended answer, that compliance with the supervisor's permits in respect of places designated for dumping of its garbage leaves the Court without jurisdiction to grant the injunction prayed and relieves defendant in respect of the nuisance resulting from the dumping. There is nothing in the Act that purports to give to one dumping at places permitted by the supervisor immunity from liability for damage or injury thereby caused to others or to deprive one suffering injury by reason of such dumping of relief that he otherwise would be entitled to have. There is no reason why it should be given that effect.

The Master's conclusions of law and recommendations for a decree are approved.

A decree will be entered declaring that the plaintiff, the State of New Jersey, is entitled to an injunction as prayed in the complaint, but that before injunction shall issue a reasonable time will be accorded to the defendant, the City of New York, within which to carry into effect its proposed plan for the erection and operation of incinerators to destroy the materials such as are now being dumped by it at sea or to provide other means to be approved by the decree for the disposal of such materials. And, in as much as the evidence does not disclose what is such reasonable time the case is referred to the same Special Master for findings of fact upon that subject. He is authorized and directed to hear witnesses presented by each of the parties, and, should he deem it necessary so to do, to call witnesses of his own selection and then with all convenient speed to report to the Court his findings and a form of decree.

It is so ordered.

SUPREME COURT OF THE UNITED STATES.

No. 13, Original.—October Term, 1931.

State of New Jersey, Plaintiff,
vs.
The City of New York.

[December 7, 1931.]

DECREE.

This cause came on to be heard upon the pleadings, evidence, and the exceptions filed by the defendant to the report of the special master, the report of the special master on re-reference and the form of decree prepared and filed by counsel for the parties. The court being fully advised in the premises, and for the purpose of carrying into effect the decision announced May 18, 1931, 283 U. S. 473, and the report of the special master on re-reference filed November 23, 1931,

It is ordered, adjudged and decreed as follows:

1. On and after June 1, 1933, the defendant, The City of New York, its employees and agents, and all persons assuming to act under its authority, be and they are hereby enjoined from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the ocean, or waters of the United States, off the coast of New Jersey, and from otherwise defiling or polluting said waters and the shores or beaches thereof or procuring them to be defiled or polluted as aforesaid.

2. That meanwhile the defendant, The City of New York, its employees and agents, and other persons assuming to act under its authority, be and they are hereby enjoined to operate and utilize the existing incinerators and other facilities for the final disposition of garbage and refuse in such a manner as to reduce to the lowest practicable limit the amount of garbage dumped at sea.

3. That the defendant, The City of New York, shall file with the Clerk of this Court, on the first days of April, and October of

each year, beginning April 1, 1932, a report to this Court adequately setting forth the progress made in the construction of incinerator plants for the final disposition of garbage and refuse, and their appurtenances, and also the amount of garbage and refuse dumped at sea during the periods covered by such reports.

4. That on the coming in of each of said reports, and on due notice to the other party, either party to this suit may apply to the Court for such action or relief, either with respect to the time allowed for the construction, or the progress of construction, or the method of operation, of the proposed incinerator plants or other means of final disposition of garbage and refuse, or with respect to the quantities, places or character of the dumping of garbage and refuse at sea, as may be deemed to be appropriate.

5. That either of the parties hereto may, irrespective of the filing of the above-described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suit for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

And it is further ordered that the costs of this suit, the expenses incurred by the special master and his compensation, to be fixed by the Court, shall be taxable against the defendant.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 13, Original.—October Term, 1932.

State of New Jersey, Complainant, *vs.* City of New York, Defendant.	Order for Hearing and Appointing a Special Master.

[May 29, 1933.]

May 8, 1933, complainant filed its petition representing that the defendant has failed to take action necessary to comply with our decree entered December 7, 1931, (284 U. S. 585) and praying an order that defendant show cause why it should not be adjudged in contempt. On the same day defendant filed an application asserting its inability to comply with the decree within the time limited, and praying that the time for the taking effect of the injunction be extended from June 1, 1933, to April 1, 1934. It is ordered:

These applications will be heard November 6, 1933.

Edward K. Campbell is appointed Special Master, empowered to issue subpoenas for witnesses and to take the evidence that may be offered by the respective parties, and also such as he may deem necessary, to show: (1) What shall have been done by defendant, up to September 15, 1933, and the time reasonably required to enable it to comply with the decree; (2) The amounts that shall have been expended, subsequent to June 1, 1933, by New Jersey and its political subdivisions to prevent or lessen the defilement or pollution of the waters, shores or beaches within that State and the damages respectively sustained by them as a result of defendant's failure to comply with the decree.

The evidence shall be taken at such times and places as the Master, by notice to counsel, shall fix. And he is directed to report to the Court, not later than October 20, 1933, the evidence so taken together with his findings of fact thereon. His findings will be subject to consideration, revision or approval by the Court.

When the report of the Special Master is filed the Clerk of the Court shall cause the same to be printed and the Court, without the filing of exceptions, will hear the parties thereon.

The Special Master shall be allowed his actual expenses and a reasonable compensation for his services to be fixed hereafter by the Court. The allowances to him, the compensation paid to his stenographic and clerical assistants, and the cost of printing his report shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct.

If the appointment herein made of a Special Master is not accepted, or if the place becomes vacant during the recess of the Court, the Chief Justice shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 12, Original.—October Term, 1933.

State of New Jersey, Plaintiff,
vs.
The City of New York.

[December 4, 1933.]

[Decree.]

Leave having been granted, 279 U. S. 823, the State of New Jersey, May 20, 1929, filed its bill of complaint against the City of New York and prayed that the City be enjoined from dumping garbage or other noxious, offensive or injurious matter into the ocean or other waters of the United States off the coast of New Jersey and from otherwise polluting its waters and its beaches. Defendant answered, raising issues of fact. The Court appointed Edward K. Campbell special master, 280 U. S. 514, who took the evidence and reported the same, together with his findings of fact, conclusions of law and recommendations for a decree.

He found that defendant had created and was continuing to create a public nuisance upon beaches and other property of plaintiff, concluded plaintiff was entitled to relief and recommended that injunction be granted as prayed, but that defendant should be allowed a reasonable time within which to provide incinerators for the disposal of its garbage and rubbish. After hearing upon exceptions filed by defendant, the Court approved the master's report. As no evidence had been taken to show what time would be required, the master was directed to take evidence upon that subject and report his findings and a form of decree. 283 U. S. 473. After evidence had been taken, the parties agreed upon the terms of an injunction and prepared a proposed form of decree which together with the master's report was filed with the Clerk.

December 7, 1931, the Court entered its decree, in the form of that submitted by the parties. Among other things, it ordered,

adjudged and decreed that on and after June 1, 1933, defendant be enjoined as prayed, and until then defendant utilize existing facilities to reduce dumping to the lowest practicable limit and file reports showing progress of construction and quantities of garbage and rubbish dumped. 284 U. S. 585.

Defendant's reports, filed in April and October, 1932 and April, 1933, show that it failed to take action necessary to cease dumping within the time specified in the decree. May 8, 1933, plaintiff filed its petition that defendant be ordered to show cause why it should not be adjudged in contempt of court. Defendant answered. It represented that, because of lack of financial means, the construction of the plants had been unavoidably delayed and that it was unable, within the time allowed, to complete the plants and to cease dumping. It prayed that April 1, 1934, be fixed as the effective date of the decree.

The Court ordered these applications to be heard November 6, 1933, and appointed Edward K. Campbell special master to take evidence to show the progress of defendant's work of plant construction up to September 15, 1933, the time reasonably required to enable defendant to comply with the decree, the amounts expended by plaintiff and its political subdivisions subsequent to June 1, 1933 to prevent or lessen defilement or pollution of waters, shores or beaches within the State and the damages respectively sustained by them as a result of defendant's failure to comply with the decree. The order directed him to make findings thereon. 289 U. S. 712.

October 19, 1933, the special master filed his report showing, and the Court finds: Defendant has two incinerators under construction which, as estimated by its sanitation engineer, will be ready for operation on April 21, and June 30, 1934, respectively. These plants will not be quite adequate for disposal of defendant's garbage and rubbish. Plaintiff's municipal subdivisions expended between June 1 and September 15, 1933, the sum of $2,160.79.

At the hearing, November 6, 1933, defendant, through its counsel, represented that by the use of these incinerators and other means to be provided, it would be able fully to comply with the decree on and after July 1, 1934, and it prayed that the decree be modified to take effect on that day. The Court grants the extension prayed and modifies the decree by changing its effective date,

adds provisions for its enforcement, and adjudges defendant liable for the amounts expended by plaintiff's political subdivisions, and that defendant pay costs, the expenses incurred by the master and his compensation.

Accordingly, it is ordered, adjudged and decreed:

1. On and after July 1, 1934, the defendant, The City of New York, its employees and agents, and all persons assuming to act under its authority, be and they are hereby enjoined from dumping, or procuring or suffering to be dumped, any garbage or refuse, or other noxious, offensive or injurious matter, into the ocean, or waters of the United States, off the coast of New Jersey, and from otherwise defiling or polluting said waters and the shores or beaches thereof or procuring them to be defiled or polluted as aforesaid.

2. If defendant shall fail to comply with paragraph 1 of this decree by July 1, 1934, it shall pay to plaintiff $5,000.00 a day until it does so comply; such payments however are to be without prejudice to any other relief to which complainant may be found entitled.

3. Plaintiff shall have and recover from defendant the sum of $2,160.79 for the use and benefit of its political subdivisions above referred to.

And it is further ordered that the costs, the expenses incurred by the special master and his compensation, to be fixed by the Court, shall be taxed against the defendant.

A true copy.

Test:

Clerk, Supreme Court, U. S.

END OF CASE